

## LEASE AGREEMENT

This Lease Agreement (this "**Lease**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2015 (the "**Effective Date**"), by and between Holladay Properties Grand Park Sports I LLC, an Indiana limited liability company ("**Landlord**"), and the City of Westfield, Indiana, an Indiana municipal corporation ("**Tenant**").

### Recitals

A. Landlord owns (or is anticipated to own) that certain undeveloped parcel of land containing approximately 14.5 acres in Westfield, Indiana, as legally described on Exhibit A attached hereto and made a part hereof (the "**Land**").

B. Landlord shall construct the Project Improvements (as defined in Section 2.1(a) hereof) on the Land, subject to the terms and conditions of this Lease. The Project Improvements and all other improvements, fixtures and other items of real property which are installed or located on the Land, together with all additions, alterations and replacements thereof are herein collectively called the "**Improvements**." The Land and the Improvements are herein collectively called the "**Demised Premises**."

C. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Demised Premises, subject to the terms and conditions of this Lease.

### Agreements

Now, therefore, for and in consideration of the foregoing Recitals, the covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

### Article I.

#### Recitals, Grant, Term and Conditions Precedent

**Section 1.1 Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into this Lease and are hereby made a part hereof as if fully set forth herein.

**Section 1.2 Grant and Term of Lease.** Landlord hereby demises and leases the Demised Premises to Tenant, to have and to hold the same, for a term commencing on the Lease Commencement Date (as defined in Section 2.3(a) hereof) and ending 25 Lease Years (as defined in Section 3.1 hereof) after the Lease Commencement Date, unless sooner terminated in the manner provided herein (the "**Term**"), to be occupied and used by Tenant for the uses permitted under Section 4.1 hereof, subject to the covenants and agreements herein contained. Tenant shall be liable to Landlord for the payment of Base Rent (as defined in Section 3.1 hereof) and the payment of any other obligations to be paid by Tenant commencing on the Lease Commencement Date.

### **Section 1.3    Conditions Precedent.**

(a)     On, or within four business days following, the Effective Date, Tenant shall publish notice of the execution of this Lease in the manner required under applicable Indiana law. Landlord and Tenant agree that it shall be a condition precedent to any obligations on the part of either Landlord or Tenant under this Lease, other than those obligations set forth in this Section 1.3(a), that either (i) 30 days shall have passed from the date of such publication without any party having contested in the manner provided under Indiana law the approval or execution of this Lease, or (ii) if any party contests in the manner provided under Indiana law the approval or execution of this Lease within 30 days of such publication, that such contest is fully and completely abandoned within 30 days after having been made (the "**Lease Contest Condition**"). In the event of any such contest, Tenant shall immediately notify Landlord of such contest and if such contest is not fully and completely abandoned within 30 days after having been made, then any and all obligations under this Lease shall be null and void without further action on the part of either Landlord or Tenant. In the event no such contest occurs, or if such a contest occurs but such contest is fully and completely abandoned within 30 days after having been made, then the Lease Contest Condition shall be deemed fully and completely satisfied and Landlord and Tenant shall promptly execute a certificate confirming the same.

(b)     Landlord and Tenant agree that it shall be a condition precedent to any obligations on the part of Landlord under this Lease, other than those obligations set forth in this Section 1.3(b), that Landlord shall have determined that there has been no material adverse change to the project contemplated by this Lease, including, without limitation, the availability of the financing of the Project Improvements consistent with the terms set forth on Schedule 1.3(b) attached hereto and made a part hereof (the "**Financing**"), during the period commencing on the Effective Date and continuing through the date that is 75 days after the Effective Date (the "**Material Adverse Change Condition**"). In the event of any such material adverse change, Landlord may notify Tenant of such material adverse change, and any and all obligations under this Lease shall be null and void without further action on the part of either Landlord or Tenant. In the event no such material adverse change occurs or Landlord waives the Material Adverse Change Condition, the Material Adverse Change Condition shall be deemed fully and completely satisfied and Landlord and Tenant shall promptly execute a certificate confirming the same.

(c)     Landlord and Tenant agree that it shall be a condition precedent to any obligations on the part of Landlord under this Lease, other than those obligations set forth in this Section 1.3(c), that Landlord shall have acquired title to the Land on or before the date that is 75 days after the Effective Date (the "**Land Acquisition Condition**"). In the event Landlord has not so acquired the Land, Landlord may notify Tenant thereof, and any and all obligations under this Lease shall be null and void without further action on the part of either Landlord or Tenant. In the event Landlord so acquires the Land, the Land Acquisition Condition shall be deemed fully and completely satisfied and Landlord and Tenant shall promptly execute a certificate confirming the same.

**Article II.**  
**Construction of the Project Improvements**

**Section 2.1 Project Improvements, Construction Plans, Change Orders and Allowances.**

(a) Project Improvements. Landlord shall (i) retain such architects, engineers and/or consultants from time to time (collectively, the "**Project Architect**") to design the Project Improvements and provide all of the standard architectural, engineering and space planning services required in connection with the construction and delivery of the Project Improvements, (ii) apply for and obtain the required building and other similar permits in connection with the construction and delivery of the Project Improvements, and (iii) furnish all of the material, labor and equipment for the construction on the Land of certain improvements consisting of (A) an approximately 378,000 square foot indoor athletic facility, including, without limitation, the tenant finish portion of the Project Improvements in accordance with the process anticipated by Exhibit C attached hereto and made a part hereof (the "**Building**"), and (B) related parking areas, athletic fields and grounds (collectively, the "**Project Improvements**"). Landlord shall complete construction of the Project Improvements in substantial accordance with the Construction Plans (as defined in Section 2.1(b) hereof), the applicable building code as it is in effect, interpreted and enforced by the governmental bodies having jurisdiction thereof, and the Americans With Disabilities Act (the "**ADA**") and all other applicable laws, as the same are in effect, interpreted and enforced with respect to the Project Improvements by governmental or other bodies having jurisdiction thereof. For the avoidance of doubt, except for Landlord's obligations to design and construct the Project Improvements as expressly set forth in this Lease (collectively, "**Landlord's Express Lease Obligations**"), all compliance with the ADA and all other applicable laws with respect to the Demised Premises, as the same are from time to time in effect, interpreted and enforced by governmental or other bodies having jurisdiction over such matters, shall be the sole responsibility of Tenant. Landlord shall own fee simple title to all of the Demised Premises.

(b) Construction Plans. Landlord shall cause plans and specifications for the Project Improvements to be prepared by the Project Architect in a manner that is consistent in all material respects with the outline specifications set forth on Exhibit B attached hereto and made a part hereof (such plans and specifications, subject to Change Orders (as defined in Section 2.1(c)(iii) hereof) and other modifications initiated by Landlord in the course of construction of the Project Improvements, are collectively, the "**Construction Plans**").

(c) Change Orders.

(i) Tenant may request changes in the work with respect to the Project Improvements consisting of additions or deletions to, or other revisions in, the Construction Plans (such a request from Tenant, a "**Tenant Change Order**"). Landlord shall approve any Tenant Change Order that is (A) deemed reasonable and necessary by Tenant, (B) approved by any Mortgagee (as defined in Section 16.1 hereof), and (C) reasonably determined by Landlord to be financially feasible and practicable in light of the project schedule as it relates to the structure and nature of the Financing. Landlord shall include the information required by Section 2.1(c)(iii) hereof in any approved Tenant Change Order.

(ii) In the event that (A) a Force Majeure Event (as defined in Section 2.2(a) hereof) occurs that Landlord reasonably determines has a material adverse impact on construction activities (whether by requiring a change in the Construction Plans, increasing the cost of completing construction in accordance with the Construction Plans or otherwise), and/or (B) Landlord determines that the full cost of installing, to the point at which such lines and infrastructure connect to the Building, any and all utility lines and infrastructure required in connection with the construction of the Project Improvements (including, without limitation, any road development fees, tap fees or connection fees and the costs, if any, required to obtain easements or rights of way) is not accurately accounted for in the projected Project Costs set forth on Exhibit F attached to and made a part hereof (as defined in Section 3.5 hereof), then Landlord shall have the right, upon notice to Tenant as to the amount and reason therefor, to change the Project Improvements and/or the Project Costs as may be reasonably necessary by reason of such condition (such change from Landlord, a "**Landlord Change Order**"). Tenant shall not have the right to approve or disapprove any Landlord Change Order.

(iii) Any Tenant Change Order approved by Landlord or Landlord Change Order evidenced by a written change order prepared by Landlord is herein called generally a "**Change Order**." A Change Order is a written order, stating in detail, if applicable, the change in the work, the increase or decrease to the scope of work of the applicable portion of the Project Improvements, any anticipated change in the scheduled date for the substantial completion thereof, or any change in the cost thereof resulting from such Change Order (which, for the avoidance of doubt, shall include any financing costs related thereto or resulting therefrom) (any such change in cost is herein called a "**Change Order Cost**"). The Change Order Cost shall be determined in the manner described in Section 2.1(d) hereof and shall be set forth as part of the written Change Order. Any Change Order Cost that increases the cost of constructing the Project Improvements shall be added to the Project Costs.

(d) Change Order Costs. The Change Order Cost for each Change Order hereunder shall be equal to the sum of all projected costs by Landlord, including, without limitation, financing costs whether expenses or interest costs (which shall be documented and verifiable) incurred in connection with the subject change, plus an aggregate fee of seven and 50/100 percent (7.50%). Prior to the start of the work which is the subject of a Change Order, Landlord shall provide Tenant with reasonable documentation with respect to the Change Order Costs therefor. Tenant agrees that Tenant shall pay to Landlord, in advance and on demand, the full amount of the Change Order Cost.

(e) Allowances. Landlord shall construct the tenant finish portion of the Project Improvements in accordance with the process anticipated by Exhibit C attached hereto and made a part hereof.

## **Section 2.2 Scheduled Substantial Completion and Delivery of Possession, Tenant Delays, Excused Delays and Substantial Completion.**

(a) Scheduled Substantial Completion and Delivery of Possession, Tenant Delays and Excused Delays. Landlord (i) shall proceed diligently with the construction of the Project

Improvements in substantial accordance with the Construction Plans, and (ii) shall Substantially Complete (as defined in Section 2.2(b) hereof) the Project Improvements and deliver possession of the Demised Premises to Tenant no later than 13 months after the last to occur of the date the Lease Contest Condition is satisfied, the date the Material Adverse Change Condition is satisfied or the date the Land Acquisition Condition is satisfied (the "**Scheduled Substantial Completion Date**"), provided, however, that if there is any delay therein (of which Landlord has given Tenant notice within 30 days after Landlord has actual notice of the event giving rise to such delay) which is caused or materially contributed to by Tenant, including, without limitation, any delay in the construction timeline resulting from any Change Orders requested by Tenant or as a result of the process anticipated by Exhibit C attached hereto and made a part hereof ("**Tenant Delays**"), from any other Change Orders or by Force Majeure Events (collectively, including, Tenant Delays, "**Excused Delays**"), then the Scheduled Substantial Completion Date and delivery of possession shall be extended for the additional time caused thereby. For purposes of this Lease, the term "**Force Majeure Events**" shall mean any act of God, unusual weather conditions, labor or material shortages, fire, earthquake, flood, explosion, police action, invasion, insurrection, riot, mob violence, sabotage, strike, terrorism, condemnation, any court order, judgment or decree or other judicial action, governmental acts or omissions (including, without limitation, permitting and other approvals necessary to effectuate the Project Improvements), subterranean conditions of the Land that were not reasonably foreseeable on the Effective Date and that have a material adverse impact on construction activities, finding or adjudging the absence of the ability, right, power or authority of a party to carry out the terms of this Lease, or otherwise preventing or enjoining a party from proceeding with its obligations under this Lease, restraint by or of governmental, civil or military authorities, or any other causes beyond the reasonable control of the parties.

(b) Substantial Completion. For purposes of this Lease, the Project Improvements shall be considered substantially completed (which, together with any other phrase similar to, or other form of, "substantially completed," is herein called "**Substantially Completed**," "**Substantial Completion**," or the like) at such time as the material portions of the Project Improvements are ready for occupancy and capable of being put to the Permitted Use (as defined in Section 4.1 hereof), subject to the Punch List (as defined in Section 2.4 hereof).

(c) Early Access. Upon reasonable advance notice to Landlord, Landlord may allow Tenant access to the Demised Premises (provided that such access is permitted by all applicable governmental authorities having jurisdiction) to install cabling and conduit and complete other proprietary work (but not to conduct its operations). Anything in this Section 2.2(c) to the contrary notwithstanding, in connection with the early access permitted hereunder, (i) Tenant shall not interfere with the completion of construction of the Project Improvements or occasion any labor dispute as a result of such installations, (ii) Tenant hereby assumes all risk of loss or damage to its cabling and conduit, and to any and all other personal property of Tenant, or its contractors, subcontractors, agents and employees, except loss or damage caused by the negligence or willful acts of Landlord or its contractors, subcontractors, agents or employees, and (iii) Tenant and Tenant's contractors shall reasonably cooperate with Landlord and Landlord's contractors to avoid delays and increased costs. Any delay in Substantial Completion attributable to Tenant's access pursuant to this Section 2.2(c) shall be considered a Tenant Delay.

**Section 2.3 Lease Commencement Date and Delays in Substantial Completion of Project Improvements.**

(a) Lease Commencement Date. The Term shall commence on the date that Landlord delivers possession of the Demised Premises to Tenant with all of the Project Improvements Substantially Completed (the "**Lease Commencement Date**"). Within a reasonable time after the Lease Commencement Date, Landlord shall deliver to Tenant a commencement date memorandum in substantially the form set forth on Exhibit D attached hereto and made a part hereof (the "**Lease Commencement Date Memorandum**"), with all blanks relating to dates completed with dates that Landlord derives in accordance with this Lease. Within 10 days after receipt thereof from Landlord, Tenant shall execute and deliver the Lease Commencement Date Memorandum to Landlord. Tenant's failure to execute and deliver to Landlord the Lease Commencement Date Memorandum shall be deemed an admission that the Lease Commencement Date Memorandum is accurate, unless Tenant has delivered objections thereto to Landlord within the 10 day period.

(b) Delays in Substantial Completion of Project Improvements. It is anticipated that the Project Improvements shall be Substantially Completed in accordance with this Lease by the Scheduled Substantial Completion Date. In the event that, unless any such delay was due to an Excused Delay, the Project Improvements are not Substantially Completed by the date which is 90 days after the Scheduled Substantial Completion Date (the "**First Delayed Scheduled Substantial Completion Date**"), then all Base Rent hereunder shall abate for one day for each day from the First Delayed Scheduled Substantial Completion Date to the actual date on which the Project Improvements are Substantially Completed in accordance with this Lease (the "**Actual Substantial Completion Date**"). In the event that, subject to Excused Delays, the Project Improvements are not Substantially Completed by the date which is 180 days after the Scheduled Substantial Completion Date (the "**Second Delayed Scheduled Substantial Completion Date**"), then, in addition to the abatement of Base Rent under the immediately preceding sentence, all Base Rent hereunder shall abate for one additional day for each day from the Second Delayed Scheduled Substantial Completion Date to the Actual Substantial Completion Date. Notwithstanding any other provision in this Lease, the rent abatement shall be Tenant's sole and exclusive remedy for late delivery of the Demised Premises and shall accrue as set forth above and shall be credited commencing on the Lease Commencement Date.

**Section 2.4 Punch List Items.** Within 30 days after Substantial Completion of the Project Improvements, Landlord and Tenant shall inspect the Project Improvements and develop a list of items which were not properly completed by Landlord in material accordance with this Lease and the Construction Plans (the "**Punch List Items**"). Landlord and Tenant shall use their respective good faith reasonable efforts to agree on a mutually convenient date for such inspection and development of the list of the Punch List Items (the "**Punch List**"). Landlord shall thereafter promptly commence material completion of the Punch List Items within 30 days after the Punch List has been finalized, and shall continue to pursue such completion with commercially reasonable diligence and speed, but no later than 60 days after the Punch List has been finalized (subject to Excused Delays).

## **Section 2.5 Construction Meetings and Inspections.**

(a) Construction Meetings. Commencing on the first full week after the week in which Landlord commences vertical construction of the Project Improvements, and continuing each week thereafter until Substantial Completion, Landlord, Tenant, the Project Architect and a representative of the general contractor of the Project Improvements shall attend construction meetings at a mutually acceptable location during general business hours, for the purposes of discussing the progress of the Project Improvements in accordance with the construction schedule.

(b) Inspections. Upon reasonable written notice delivered to Landlord, Tenant may cause inspections of the Project Improvements as Tenant reasonably deems to be necessary or appropriate (the "**Tenant's Inspections**"), provided that (i) Tenant shall specify the portion of the Project Improvements to be inspected by not less than 24 hours prior written notice to Landlord, (ii) Tenant shall comply with all health and safety rules of which Tenant has been informed that have been established by Landlord and/or the general contractor for personnel present on the Demised Premises, and (iii) Landlord shall coordinate the inspections so that the inspections do not interfere with the construction of the Project Improvements. Landlord reserves the right to accompany, and/or to have the general contractor accompany, Tenant, or its representative, during any inspection of the Project Improvements. In conjunction with any Tenant's Inspections, Tenant shall notify Landlord of any item or component of the Project Improvements that Tenant reasonably believes (i) is defective or materially deviates from the Construction Plans, or (ii) has not been performed in material accordance with the terms and conditions of this Lease or the Construction Plans.

## **Article III. Rent**

**Section 3.1 Base Rent.** In consideration of the construction of the Project Improvements and the leasing of the Demised Premises, Tenant covenants to pay to Landlord, without previous demand therefor and without any right of setoff or deduction whatsoever, except as otherwise expressly permitted herein, at the address of Landlord for notice as set forth in Section 20.3 hereof or at such other place as Landlord may from time to time designate in writing, annual base rent (the "**Base Rent**") as follows:

each Lease Year for Lease Years 1 – 5:	\$1,970,000 per annum;
each Lease Year for Lease Years 6 – 10:	\$2,045,000 per annum;
each Lease Year for Lease Years 11 – 15:	\$2,120,000 per annum;
each Lease Year for Lease Years 16 – 20:	\$2,195,000 per annum; and
each Lease Year for Lease Years 21 – 25:	\$2,270,000 per annum.

The above Base Rent amounts are subject to increase as provided in Section 3.2 hereof. In the event of any such increase in the above Base Rent amounts, Landlord and Tenant shall promptly execute a certificate confirming the same. Except as otherwise provided herein, Base Rent shall

be payable in advance, in two equal semi-annual installments on April 1 and October 1 of each Lease Year (as defined in Section 3.1(a) hereof).

(a) Lease Commencement Date Prior to April 1, 2016. For purposes of this Lease, if the Lease Commencement Date occurs prior to April 1, 2016, the term "**Lease Year**" shall mean the first 12 full calendar months following the Lease Commencement Date and each consecutive 12 full calendar month period thereafter, provided, however, that the term "**Lease Year**" for the initial Lease Year shall include the remaining portion of the partial semi-annual period in which the Lease Commencement Date occurs and the full following 12 months. By way of example only, and not in limitation, if the Lease Commencement Date is December 20, 2015, then the initial Lease Year shall be for the period commencing on December 20, 2015, and continuing through March 31, 2017. The first semi-annual installment of Base Rent for the initial Lease Year shall be due and payable on October 1, 2016, and Tenant shall also pay, on such date, a supplemental Base Rent payment that is prorated by multiplying the amount of the first semi-annual installment of Base Rent for the initial Lease Year by a fraction, the numerator of which is the number of days, including the Lease Commencement Date, then remaining in such semi-annual period, and denominator of which is 180; provided, however, the amount of capitalized interest included in the Financing that is attributable to the period from the Lease Commencement Date through March 31, 2016, shall be credited against the supplemental Base Rent payment. The second semi-annual installment of Base Rent for the initial Lease Year shall be due and payable on October 1, 2016 (being the same due date as the first semi-annual installment of Base Rent for the initial Lease Year).

(b) Lease Commencement Date on or After April 1, 2016. For purposes of this Lease, if the Lease Commencement Date occurs on or after April 1, 2016, the term "**Lease Year**" shall mean the first 12 full calendar months following the Lease Commencement Date and each consecutive 12 full calendar month period thereafter, provided, however, that in the event that the Lease Commencement Date occurs other than on the first day of a semi-annual period, the term "**Lease Year**" for the initial Lease Year shall include the remaining portion of the partial semi-annual period in which the Lease Commencement Date occurs and the full following 12 months. By way of example only and not in limitation, if the Lease Commencement Date is May 20, 2016, then the initial Lease Year shall be for the period commencing on May 20, 2016, and continuing through September 30, 2017. The first semi-annual installment of Base Rent for the initial Lease Year shall be due and payable on the first April 1 or October 1 to occur on or after the Lease Commencement Date, and, in the event that the Lease Commencement Date does not occur on the first day of a semi-annual period, Tenant shall also pay, on such date, a supplemental Base Rent payment that is prorated by multiplying the amount of the first semi-annual installment of Base Rent by a fraction, the numerator of which is the number of days, including the Lease Commencement Date, then remaining in such semi-annual period, and denominator of which is 180. The second semi-annual installment of Base Rent for the initial Lease Year shall be due and payable on the next following April 1 or October 1 to occur. By way of example only and not in limitation, if the Lease Commencement Date is May 20, 2016, then the first semi-annual installment of Base Rent for the initial Lease Year shall be due and payable on October 1, 2016, the supplemental payment of Base Rent for the initial Lease Year shall be due and payable on October 1, 2016, and the second semi-annual installment of Base Rent for the initial Lease Year shall be due and payable on April 1, 2017.



(c) Subsequent Lease Years. For each Lease Year after the initial Lease Year, the first semi-annual installment of Base Rent shall be due and payable on April 1 or October 1 of that Lease Year, as applicable, and the second semi-annual installment of Base Rent for such Lease Year shall be due and payable on April 1 or October 1 of such Lease Year, as applicable.

**Section 3.2 Base Rent Adjustment.** In the event the assumed interest rate for the Financing set forth as a part of the Project Costs increases after the Effective Date, then the annual Base Rent shall be immediately, automatically and equitably increased so as to ensure that any and all of the additional cost associated therewith or resulting therefrom is borne by Tenant in the form of increased Base Rent throughout the Term and without any impact to Landlord or its financial return associated with this Lease.

**Section 3.3 Additional Rent.** Except as expressly otherwise provided in this Lease, (a) the Base Rent shall be net to Landlord so that this Lease shall yield, net to Landlord, the Base Rent in each year of the Term, and (b) all real estate taxes and other impositions or assessments, all insurance premiums, all utility charges, all management fees, all operating, maintenance, repair and replacement expenses (including, without limitation, all expenses of a capital nature and for snowplowing, landscaping and the like), all expenses relating to compliance with laws, and all other costs, fees, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to the Demised Premises, which may arise or become due during the Term, shall be paid or discharged by Tenant. In the event Tenant fails to pay or discharge any real estate taxes or other impositions, insurance premiums, utility charges, management fees, operating, maintenance, repair or replacement expenses, expenses relating to compliance with laws, or other costs, fees, charges, expenses, reimbursements or obligations that Tenant is obligated to pay or discharge, and after not less than 30 days' prior written notice (except that no notice shall be required in the case of emergencies), Landlord may, but shall not be obligated to pay the same, and in such event, Tenant shall immediately reimburse Landlord therefor and pay the same as additional rent (all such items for which Tenant is responsible hereunder are herein collectively called "**Additional Rent**"). The Base Rent and the Additional Rent are herein collectively called "**Rent**."

**Section 3.4 Delinquent Payments.**

(a) Except as expressly provided in this Lease, all payments of Base Rent and Additional Rent shall be payable without previous demand therefor without any right of setoff or deduction whatsoever. Any installment of Base Rent or Additional Rent or any other charges payable by Tenant under this Lease which are not paid when due shall bear interest at an annual rate equal to five and 00/100 percent (5.00%) per annum in excess of the published "prime rate" or "base rate" of interest charged by JPMorgan/Chase Bank, N.A., Indianapolis, Indiana (or if it is not then in existence, its successor, or if neither is then in existence, another reasonably comparable bank selected by Landlord) from the date when the same is due hereunder until the same has been paid, but in no event in excess of the maximum lawful rate permitted to be charged by Landlord against Tenant. Such rate of interest is sometimes hereinafter referred to as the "**Maximum Rate of Interest**."

(b) Tenant acknowledges that Landlord shall incur certain additional unanticipated administrative and legal costs and expenses if Tenant fails to pay timely any payment required

hereunder. Therefore, in addition to the other remedies available to Landlord hereunder, if any payment required to be paid by Tenant to Landlord hereunder shall become overdue, Landlord may charge the amount of the late or other similar charge due in connection with the Financing plus ten percent (10%) for any such late payment.

**Section 3.5 Project Costs.** For purposes of this Lease, the term "**Project Costs**" shall mean any and all costs and expenses incurred in connection with and in furtherance of consummating the transactions and activities contemplated by this Lease, including, without limitation, the costs and expenses incurred in connection with the acquisition of the Land, the loan and related costs and expenses of the Financing, and the hard and soft costs and expenses incurred in building the Project Improvements. The Project Costs shall include, but not be limited to, the costs and expenses of any nature related to the development and construction of the Project Improvements including, without limitation, the projected Project Costs set forth on Exhibit F attached to and made a part hereof.

#### **Article IV. Use of Demised Premises**

**Section 4.1 Permitted Use.** The Demised Premises, including, without limitation, all Improvements hereafter erected on the Land, shall be used for any one or all of the following: indoor athletic fields, other uses ancillary thereto and any other use approved by Landlord, such approval not to be unreasonably delayed, conditioned or withheld (the "**Permitted Use**"). Tenant shall not use or occupy the same, or knowingly permit them to be used or occupied, contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto, or in any manner which would violate any certificate of occupancy affecting the same or any of the Permitted Encumbrances (as identified on Exhibit A), or which would make void or voidable any insurance then in force with respect thereto or which would make it commercially impracticable to obtain fire or other insurance thereon required to be furnished hereunder by Tenant, or which would constitute a public or private nuisance or waste, or which would violate Tenant's obligations under Section 9.4 hereof with respect to any Hazardous Materials Laws (as defined in Section 9.4(a) hereof).

**Section 4.2 Acceptance of Demised Premises.** Except as explicitly set forth in this Lease, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Demised Premises or with respect to the suitability or fitness of the same for the conduct of Tenant's operations or for any other purpose.

#### **Article V. Payment of Taxes, Assessments and Other Impositions**

**Section 5.1 Tenant Obligation and Payment of Impositions.** Tenant shall pay, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, or as otherwise reasonably directed by Landlord, all real estate taxes, special assessments, water rates and charges, sewer rates and charges, including, without limitation, any sum or sums payable for present or future sewer or water capacity, charges for public and private utilities, street lighting, excise levies, licenses, permits, inspection fees, other governmental charges, taxes based upon the receipt of rent, and all other charges or burdens of whatsoever kind and nature incurred in the use, occupancy,

ownership, operation, leasing or possession of the Demised Premises, without particularizing by any known name or by whatever name hereafter called, and regardless of whether any of the foregoing are general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time are due and payable during the Term or otherwise reasonably determined by Landlord to have accrued during or to be attributable to the Term (collectively, "**Impositions**"). Landlord shall cause the taxing authority to send the tax bills directly to Tenant, and Tenant shall pay directly to the taxing authority such Impositions. If the taxing authority requires that payment be made by Landlord, Tenant shall pay to Landlord the amount of Tenant's obligation prior to the date on which such Impositions are due. If the statement for the Impositions is sent to Landlord, Landlord shall promptly forward the statement to Tenant. In the event assessments are payable in installments, Tenant shall have the right to elect to pay same over the longest available installment period. Tenant shall be entitled to the benefit of any discount, rollback or credit given to Landlord with respect to any real estate taxes applicable to this Lease.

**Section 5.2 Tenant's Right to Contest Impositions.** Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith. If permitted by law, Tenant may postpone or defer payment of such Imposition if (a) neither the Demised Premises nor any portion thereof would, by reason of such postponement or deferment, be in danger of being forfeited or lost, and (b) unless Landlord and Tenant have reasonably agreed as to an alternate form of security, Tenant shall have deposited with Landlord cash or a certificate of deposit payable to Landlord issued by a national bank or federal savings and loan association reasonably acceptable to Landlord in the amount of one hundred ten and 00/100 percent (110.00%) of the Imposition so contested and unpaid, together with all interest and penalties which may accrue in Landlord's reasonable judgment in connection therewith, and all charges which may be assessed against or become a charge on the Demised Premises, or any portion thereof, during the pendency of such proceedings. Immediately upon the termination of any such proceedings, Tenant shall pay the amount of such Imposition or portion thereof, if any, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, including, without limitation, reasonable attorneys' fees, interest, penalties, fines and other liability in connection therewith. Within 30 days after such payment by Tenant, Landlord shall return all amounts or certificates deposited with it with respect to the contest of such Imposition, as aforesaid, or at the written direction of Tenant, Landlord shall make such payment out of the funds on deposit with Landlord and the balance, if any, shall be returned to Tenant. Tenant shall be entitled to the refund of any Imposition, penalty, fine and interest thereon received by Landlord which have been paid by Tenant or which have been paid by Landlord but for which Landlord has been previously reimbursed in full by Tenant. Landlord shall not be required to join in any proceedings referred to in this Section 5.2 unless the provisions of any law, rule or regulation at the time in effect requires that such proceedings be brought by or in the name of Landlord. In such event, Landlord shall join in such proceedings or permit the same to be brought in Landlord's name at no cost to Landlord and upon compliance with such conditions as Landlord may reasonably require. Landlord shall not ultimately be subject to any liability for the payment of any fees, including, without limitation, reasonable attorneys' fees, costs and expenses in connection with such proceedings. Tenant shall pay all such fees (including, without limitation, reasonable attorneys' fees), costs and expenses or, on demand, shall reimburse Landlord for such payment. During the time when any certificate of deposit is on deposit with Landlord, and prior to the time when the same is returned to Tenant or applied against the payment, removal or discharge of

Impositions, as above provided, Tenant shall be entitled to receive all interest paid thereon, if any. Cash deposits shall not bear interest.

**Section 5.3 Evidence of Payment.** Tenant shall furnish to Landlord and to Mortgagee not less than 30 days before the date upon which any Imposition is due and payable, official receipts of the appropriate taxing authority, or other appropriate proof reasonably satisfactory to Landlord, evidencing the payment of the same.

**Section 5.4 Landlord's Right to Contest Impositions.** In addition to the right of Tenant under Section 5.2 hereof to contest the amount or validity of Impositions, Landlord shall also have the right, but not the obligation, to contest the amount or validity, in whole or in part, of any Impositions not contested by Tenant, by appropriate proceedings conducted in the name of Landlord or in the name of Landlord and Tenant. If Landlord elects to contest the amount or validity, in whole or in part, of any Impositions, such contests by Landlord shall be at Landlord's sole cost and expense, provided, however, that if the amounts payable by Tenant for Impositions are reduced (or if a proposed increase in such amounts is avoided or reduced) by reason of Landlord's contest of Impositions, then Tenant shall reimburse Landlord for all costs incurred by Landlord in contesting Impositions, but such reimbursements shall not be in excess of the amount saved by Tenant by reason of Landlord's actions in contesting such Impositions.

## **Article VI. Insurance**

**Section 6.1 Tenant's Property Insurance Obligations.** During the Term, Tenant shall obtain and continuously maintain in full force and effect commercial property coverage on all buildings, improvements and betterments in an amount not less than 100% of the full replacement cost on a Special Peril Form, Risk of Direct Physical Loss with agreed amount coverage, including, but not limited to: Equipment Breakdown; Flood; Earthquake limit including sprinkler leakage; Building Ordinance or Law, Coverage A Building Limit, Coverage B & C for a sublimit not less than \$500,000; Service Interruption Direct Damage Limit and Indirect Damage; Back-up Sewers and Drains; Pollution Cleanup and Removal; Trees, Shrubs, Plants, Lawns; Signs; Debris removal; Fire Department Service Charges; Expediting Expense; in an amount suitable to cover losses. Landlord shall be endorsed onto the policy as Additional Insured-Building Owner per form CP 12 19 and Mortgagee shall be listed as loss payee. At all times, such insurance coverage shall be in an amount equal to one hundred and 00/100 percent (100.00%) of the then Full Replacement Cost of the Improvements. "**Full Replacement Cost**" shall be interpreted to mean the cost of replacing the Improvements without deduction for depreciation or wear and tear, and shall include, without limitation, a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with the restoration or replacement of the Improvements in the event of damage thereto or destruction thereof. If a sprinkler system is located in the Improvements, sprinkler leakage insurance shall be procured and continuously maintained by Tenant.

**Section 6.2 Tenant's Liability Insurance Obligations.** During the Term, Tenant shall obtain and continuously maintain in full force and effect Commercial General Liability Insurance for Operations of Tenant (this coverage must extend to all buildings, improvements and land and/or any other area as designated by this Lease); on a standard ISO CG 00 01 Commercial General Liability form (or equivalent). This policy must be on an occurrence basis and provide coverage

for: Abuse and Molestation; Severability of Interest between Named Insured's and Additional Insured's; Independent Subcontractors; Products and Completed Operations; Contractual Liability as standardly provided under ISO; Personal Injury Liability; and Hostile Fire Pollution. Coverage must be provided on a per location aggregate and limits must apply separately to this location. Additional insured on a Primary and Non-Contributory basis is required. The Additional Insured endorsement must include premises and operations and products and completed operations and shall name Landlord, the Mortgagee (and comply with all Mortgagee insurance requirements), property manager, agents, employees, directors, officers, shareholders, members, partners, volunteers, servants, and affiliates as Additional Insureds. The policy must provide minimum limits of:

Bodily Injury and Property Damage combined	\$5,000,000
General Annual Aggregate – Per Location	\$5,000,000
Products-Completed Operations Annual Aggregate	\$5,000,000
Bodily Injury and Property Damage Each Occurrence	\$5,000,000
Personal and Advertising Injury	\$5,000,000

The policy must have a commercially reasonable deductible and shall maintain an Umbrella Liability policy with a limit of not less than \$10,000,000 on an occurrence form. The policy must provide coverage over the primary Commercial General Liability, Automobile Liability, and Employers' Liability. A per location aggregate and additional insured on a primary non-contributory basis shall be provided under the policy. Such insurance must include specific coverage provisions or endorsements for broad form contractual liability insurance insuring Tenant's obligations under this Lease. Further, all such insurance shall be obtained and maintained from and with a reputable and financially sound insurance company authorized to issue such insurance in the State of Indiana.

**Section 6.3 Tenant's Personal Property Insurance.** During the Term, Tenant shall obtain and continuously maintain in full force and effect insurance coverage upon all personal property of Tenant on the Demised Premises against loss or damage by fire, windstorm or other casualties.

**Section 6.4 Automobile Liability Insurance.** During the Term, Tenant shall obtain and continuously maintain in full force and effect Automobile Liability Insurance limits in the minimum amount of \$1,000,000 each accident combined single limit for any automobile (including, owned, scheduled, hired, non-owned vehicles, trucks and trailers).

**Section 6.5 Workers' Compensation and Employers' Liability.** During the Term, Tenant shall obtain and continuously maintain in full force and effect Workers' Compensation Insurance in full compliance with the Workers' Compensation and Occupational Diseases Laws of all authorities having jurisdiction in locations in which the Improvements are located; and Employer's Liability coverage with limits of not less than \$500,000 each accident for Bodily Injury by accident; \$500,000 each accident for Bodily Injury by disease; and \$500,000 policy limit for Bodily Injury by disease.

**Section 6.6 Rental Interruption Insurance.** During the Term, Tenant shall maintain rent or rental value insurance in an amount equal to the full rental value of the Demised Premises for a period of two years against physical loss or damage of the Demised Premises resulting in all or a portion of the Demised Premises not being available for occupancy and use by Tenant. Landlord, unless required by Mortgagee, then Mortgagee, shall be named as loss payee on the rental interruption policy and the proceeds thereof shall be used to ensure the prompt and timely payment of any abated Rent permitted under this Lease.

**Section 6.7 Waiver of Subrogation.** Tenant shall cause to be inserted in all policies of insurance required by this Article VI a so-called "Waiver of Subrogation Clause" as to Mortgagee and Landlord and its directors, officers, shareholders, managers, members, partners, employees, contractors, agents and other representatives (collectively, the "**Landlord Parties**" and separately, a "**Landlord Party**"). Tenant hereby waives, releases and discharges the Landlord Parties from and against any claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys' fees and the reasonable costs and expenses of enforcing any indemnification, defense or hold harmless obligation under this Lease (collectively and for all purposes under this Lease, and whether with respect to Landlord or Tenant ("**Claims**")), whatsoever arising out of loss, claim, expense or damage to or destruction to the extent covered or coverable by insurance required under this Article VI, notwithstanding that such loss, claim, expense or damage may have been caused by any Landlord Party. Tenant shall look only to said insurance coverage in the event of such loss.

**Section 6.8 Evidence of Insurance.** Tenant shall deliver to Landlord reasonable evidence of the insurance required by this Article VI, including policies, not less than 30 days prior to the expiration of any such policies and otherwise promptly upon Landlord's request.

**Section 6.9 Failure to Insure.** If Tenant fails to maintain any insurance which Tenant is required to maintain pursuant to this Article VI, Landlord may obtain such insurance on behalf of Tenant and Tenant shall be liable to Landlord for the costs incurred by Landlord in connection therewith. Except for commercially reasonable deductible amounts, Tenant may not self-insure against any risks required to be covered by insurance without Landlord's prior consent.

**Section 6.10 Blanket Insurance Coverage.** Nothing in this Article VI shall prevent Tenant from taking out insurance of the kind and in the amount provided for under this Article VI under a blanket insurance policy or policies (certificates, or upon request of Landlord, policies, thereof reasonably satisfactory to Landlord shall be delivered to Landlord) which may cover other properties owned or operated by Tenant as well as the Demised Premises, provided, however, that any such policy of blanket insurance of the kind provided for shall (a) specify therein the amounts thereof exclusively allocated to the Demised Premises or Tenant shall furnish Landlord with a written statement from the insurers under such policies specifying the amounts of the total insurance exclusively allocated to the Demised Premises, and (b) not contain any clause which would result in the insured thereunder being required to carry any insurance with respect to the property covered thereby in an amount not less than any specific percentage of the Full Replacement Cost of such property in order to prevent the insured therein named from becoming a coinsurer of any loss with the insurer under such policy. Any such policies of blanket insurance shall, with respect to the Demised Premises, contain the various provisions required of such an insurance policy by the foregoing provisions of this Article VI.

**Section 6.11 General.** All insurance required by this Article VI shall be obtained and maintained from and with a reputable and financially sound insurance company with an A.M. Best Rating of A-VII or better authorized to issue such insurance in the State of Indiana, with commercially reasonably deductible amounts and with a claims paying rating ability at least equivalent to a NAIC 2 Designation.

## **Article VII. Utilities**

**Section 7.1 Payment of Utilities.** During the Term, Tenant shall pay, when due, all charges of every nature, kind or description for utilities furnished to the Demised Premises or chargeable against the Demised Premises, including, without limitation, all charges for water, sewage, heat, gas, garbage, electricity, telephone, steam, power, or other public or private utility services.

**Section 7.2 Additional Charges.** In the event that any charge or fee is required by the State in which the Demised Premises are located, or by any agency, subdivision, or instrumentality thereof, or by any utility company furnishing services or utilities to the Demised Premises, as a condition precedent to furnishing or continuing to furnish utilities or services to the Demised Premises, such charge or fee shall be deemed to be a utility charge payable by Tenant.

## **Article VIII. Repairs and Maintenance**

**Section 8.1 Repairs.** Tenant (a) shall have and hold the Demised Premises as the same shall then be, without any liability or obligation on the part of Landlord for undertaking any maintenance or for making any alterations, improvements or repairs of any kind in or about the Demised Premises for the Term, (b) shall take good care of the Demised Premises (including, without limitation, all Improvements from time to time on the Land), (c) shall keep the same in good order, condition and repair, (d) shall obtain and maintain preventative maintenance contracts for the heating, ventilation and air conditioning equipment in the Demised Premises (the "HVAC"), and (e) shall make and perform all maintenance thereof and all repairs thereto, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, of every nature, kind and description. Tenant shall make any repairs occasioned by the act, failure to act, or negligence of Tenant or any parties acting by, through or under Tenant. When used in this Article VIII, "repairs" shall include, without limitation, all necessary replacements, renewals, alterations, additions and betterments. All such repairs made by Tenant shall be at least equal in quality to the original work and shall be made by Tenant in accordance with all laws, ordinances and regulations whether heretofore or hereafter enacted. The necessity for or adequacy of maintenance and repairs shall be measured by the standards which are appropriate for improvements of similar construction and class.

**Section 8.2 Maintenance.** Tenant shall take good care of, repair and maintain the Demised Premises, including, without limitation, all driveways, pathways, roadways, sidewalks, curbs, parking areas, loading areas, landscaped areas, entrances and passageways in good order and repair and shall promptly remove all accumulated snow, ice and debris from any and all driveways, pathways, roadways, sidewalks, curbs, parking areas, loading areas, entrances and

passageways, and keep all portions of the Demised Premises, including, without limitation, areas appurtenant thereto, in a clean and orderly condition free of snow, ice, dirt, rubbish, debris and unlawful obstructions.

**Section 8.3 Landlord's Right to Effect Repairs.** If Tenant should fail to perform any of its obligations under this Article VIII, then Landlord may, if it so elects, in addition to any other remedies provided herein (including, without limitation, its remedies under Article XII hereof), and after not less than 30 days' prior written notice (or such shorter notice period as is reasonable under the circumstances), effect such repairs and maintenance. Any sums expended by Landlord in effecting such repairs and maintenance shall be due and payable, on demand, together with interest thereon at the Maximum Rate of Interest from the date of each such expenditure by Landlord to the date of repayment by Tenant. Nothing in this Section 8.3 shall limit Landlord's other remedies under this Lease.

## **Article IX.**

### **Compliance with Laws and Ordinances**

**Section 9.1 Compliance with Laws and Ordinances.** Tenant shall comply or cause compliance with, or remove or cure any violation of, any and all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state, municipal and other governmental bodies having jurisdiction over the Demised Premises and the appropriate departments, commissions, boards and officers thereof, and the orders, rules and regulations of the Board of Fire Underwriters where the Demised Premises are situated, or any other body now or hereafter constituted exercising lawful or valid authority over the Demised Premises or exercising authority with respect to the use or manner of use of the Demised Premises.

**Section 9.2 Compliance with Insurance.** Tenant shall comply with, observe and perform all provisions and requirements of all policies of insurance at any time in force with respect to the Demised Premises and required to be obtained and maintained under Article VI hereof, and shall comply with all development permits issued by governmental authorities in connection with development of the Demised Premises (and of which Landlord has notified Tenant).

**Section 9.3 Tenant's Obligations.** Notwithstanding that it may be usual and customary for Landlord to assume responsibility and performance of any or all of the obligations set forth in this Article IX, and notwithstanding any order, rule or regulation directed to Landlord to perform, Tenant hereby assumes such obligations because, by nature of this Lease, the rents and income derived from this Lease by Landlord are net rentals not to be diminished by any expense incident to the ownership, occupancy, use, leasing or possession of the Demised Premises.

### **Section 9.4 Compliance with Hazardous Materials Laws.**

(a) Definitions. For purposes of this Lease, "**Hazardous Materials**" means any of the following, in any amount: (i) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls, (ii) any radioactive substance, (iii) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound, and (iv) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in



the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation now or hereafter existing, as the same may be interpreted by government offices and agencies. For purposes of this Lease, the term "**Hazardous Materials Laws**" means all federal, state and local statutes, laws, ordinances and regulations now or hereafter existing which control, classify, regulate or define Hazardous Materials or require remediation of Hazardous Materials contamination.

(b) **General Tenant Obligations.** Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used on the Demised Premises in a manner or for a purpose prohibited by or in violation of any Hazardous Materials Law. Tenant shall comply with all Hazardous Materials Laws and prudent industry practice relating to the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Demised Premises brought upon, kept or used on the Demised Premises, or caused or permitted to be used upon the Demised Premises. Except in the event of an emergency, Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in on, under or about the Demised Premises, nor enter into any settlement agreement, consent decree or other compromise with respect to any Claims relating to or in any way connected with Hazardous Materials in, on, under or about the Demised Premises, without first notifying Landlord of Tenant's intention to do so and affording Landlord reasonable opportunity to investigate, appear, intervene and otherwise assert and protect Landlord's interest in the Demised Premises. Tenant shall conduct any necessary repair, re-construction, clean-up, remediation, detoxification or decontamination of the Demised Premises to the extent necessary to comply with all Hazardous Materials Laws.

(c) **Notice of Actions.** Tenant shall notify Landlord of any of the following actions affecting Landlord, Tenant or the Demised Premises which result from or in any way relate to Tenant's use of the Demised Premises, promptly after receiving notice of the same: (i) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law, (ii) any Claims made or threatened by any person relating to damage, contribution, liability, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Material, and (iii) any reports made by any person or entity, including, without limitation, Tenant, to any environmental agency relating to any Hazardous Material, including, without limitation, any complaints, notices, warnings or asserted violations. Tenant shall also deliver to Landlord, as promptly as possible and in any event within five business days after Tenant first receives or sends the same, copies of all Claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Demised Premises or Tenant's use of the Demised Premises.

**Section 9.5 Tenant Indemnification.** Tenant shall, to the fullest extent permitted by law, indemnify, defend and hold the Landlord Parties harmless from and against any and all Claims arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under, upon or from the Demised Premises (including, without limitation, water tables and the atmosphere).

## **Article X. Mechanic's Liens**

**Section 10.1 Freedom from Liens.** Tenant shall not suffer or permit any mechanic's liens or other liens to be filed against the Demised Premises by reason of work, labor, skill, services, equipment or materials supplied or claimed to have been supplied to the Demised Premises at the request of Tenant or any party acting by, through or under Tenant. If any such mechanic's liens or other liens are at any time filed against the Demised Premises, or any portion thereof, Tenant shall cause the same to be discharged of record, or shall cause the same to be insured by a title insurance company reasonably acceptable to Landlord, in either case within 30 days after the date of the filing thereof. If Tenant fails to discharge or insure over such mechanic's liens or other liens within such period, then, in addition to any other right or remedy of Landlord, after five days' prior written notice to Tenant, Landlord may, but shall not be obligated to, discharge the same by paying to the claimant the amount claimed to be due or by procuring the discharge of such lien as to the Demised Premises by deposit in the court having jurisdiction of such liens, the foreclosure thereof or other proceedings with respect thereto, of a cash sum sufficient to secure the discharge of the same, or by the deposit of a bond or other security with such court sufficient in form, content and amount to procure the discharge of such liens, or in such other manner as is now or may in the future be provided by present or future law for the discharge of such liens as a lien against the Demised Premises. In the alternative, Landlord may, but shall not be obligated to, cause such liens to be insured over by a title insurance company by depositing a cash sum sufficient to cause such insurance to be issued. Any amount paid by Landlord, or the value of any deposit so made by Landlord, together with all costs, fees and expenses in connection therewith (including, without limitation, reasonable attorneys' fees of Landlord), together with interest thereon at the Maximum Rate of Interest, shall be repaid by Tenant to Landlord on demand by Landlord and shall be treated as Additional Rent. To the fullest extent allowed by law, Tenant shall indemnify, defend and hold the Landlord Parties harmless from and against any and all Claims arising or resulting, in whole or in part, directly or indirectly, from the assertion, filing, foreclosure or other legal proceedings with respect to any such mechanic's liens or other liens. All materialmen, contractors, artisans, mechanics, laborers and any other person now or hereafter furnishing any labor, services, materials, supplies or equipment to Tenant with respect to the Demised Premises are hereby charged with notice that they must look exclusively to Tenant to obtain payment for the same. Notice is hereby given that Landlord shall not be liable for any labor, services, materials, supplies, skill, machinery, fixtures or equipment furnished or to be furnished to Tenant upon credit, and that no mechanic's liens or other liens for any such labor, services, materials, supplies, machinery, fixtures or equipment shall attach to or affect the estate or interest of Landlord in and to the Demised Premises.

## **Article XI. Intent of Parties**

**Section 11.1 Net Lease.** Landlord and Tenant hereby acknowledge and agree that, subject to Landlord's Express Lease Obligations, it is the intention of each of them as follows:

- (a) this Lease be interpreted and construed as a net lease,

(b) all Base Rent and Additional Rent shall be paid by Tenant to Landlord or such other party as required by this Lease without abatement, deduction, diminution, deferment, suspension, reduction or setoff (except as otherwise expressly set forth in this Lease), and

(c) the obligations of Tenant shall not be affected by reason of any casualty, condemnation, eminent domain or like occurrences or proceedings (except as expressly provided in Articles XIII and XIV hereof).

**Section 11.2 Non-Terminability.** Except as set forth in Section 1.3 hereof and as set forth in Articles XIII and XIV hereof, this Lease shall not terminate, nor shall Tenant be entitled to any abatement, deduction, deferment or reduction of Rent hereunder once the Lease Commencement Date shall have occurred, nor shall Tenant have any right to terminate this Lease or to be released, relieved or discharged from any obligations or liabilities hereunder for any reason, including, without limitation: (a) any damage to or destruction of any part of the Improvements, (b) any confiscation, condemnation, requisition or other taking of any part of the Demised Premises, (c) any limitation, restriction, deprivation (including eviction) or prevention of, or any interference with, any use or possession of all or part of the Demised Premises, (d) any default or other action, omission or breach by Landlord under this Lease or any other agreement to which Landlord and Tenant may be parties, (e) any claim as a result of any other business dealings of Landlord and Tenant or the affiliates of either, (f) the inadequacy, incorrectness or failure of the description of the Demised Premises or any portion thereof to demise and let the property intended to be so leased hereby, (g) the impossibility of performance by Landlord or Tenant, or both, (h) any Force Majeure Event, (i) any action or threatened or pending action of any court, administrative agency or other governmental authority, or (j) any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Base Rent, Additional Rent and other sums payable by Tenant hereunder shall be payable in all events, and that the obligations of Tenant hereunder shall be separate and independent covenants and shall continue unaffected unless otherwise expressly provided in this Lease. Tenant waives all rights which may at any time exist by law to quit, terminate or surrender this Lease or all or part of the Demised Premises or, except as otherwise expressly provided in this Lease, to any abatement, deferment, diminution or reduction of the Base Rent, Additional Rent or other sums payable under this Lease.

## **Article XII. Events of Default**

**Section 12.1 Events of Default.** The occurrence of any one or more of the following events (each, an "**Event of Default**") shall constitute a default and breach of this Lease by Tenant:

(a) If Tenant fails to pay any Base Rent or Additional Rent payable under this Lease or fails to pay any other financial obligation required to be paid by Tenant within five days of when and as the same becomes due and payable.

(b) If Tenant fails to perform any of Tenant's non-monetary obligations in accordance with this Lease for a period of 30 days after written notice from Landlord, provided, however, that if more time is reasonably required to complete such performance, Tenant shall not be in default

if Tenant commences such performance within the 30-day period and thereafter diligently pursues the same.

(c) If Tenant violates the provisions of Articles VI or XV hereof.

(d) If (i) Tenant makes a general assignment or general arrangement for the benefit of creditors, (ii) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Tenant, (iii) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Tenant and is not dismissed within 60 days, (iv) a trustee or receiver is appointed to take possession of all or substantially all of Tenant's assets located at the Demised Premises or of Tenant's interest in the Lease and possession is not restored to Tenant within 60 days, or (v) all or substantially all of Tenant's assets located at the Demised Premises or Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within 60 days.

**Section 12.2 Landlord's Remedies.** Upon the occurrence and during the continuance of an Event of Default by Tenant, Landlord shall be entitled to any one or more of the following rights and remedies:

(a) Landlord may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, or Landlord, at its option, without further notice, may terminate the estate and interest of the Tenant hereunder, and it shall be lawful for Landlord forthwith to resume possession of the Demised Premises and Tenant covenants to surrender the same forthwith upon demand. The exercise by Landlord of the above right to terminate this Lease shall not release Tenant from the performance of any obligation hereof maturing prior to Landlord's actual entry into possession.

(b) Perform the obligation on Tenant's behalf without waiving Landlord's rights under this Lease, at law or in equity and without releasing Tenant from any obligation under this Lease. Tenant shall pay to Landlord, as Additional Rent, all sums that Landlord pays and obligations that Landlord incurs on Tenant's behalf under this Section 12.2(b), together with interest thereon at the Maximum Rate of Interest from the date of each such expenditure by Landlord to the date of repayment by Tenant.

(c) Any other right or remedy available to Landlord under this Lease, at law or in equity.

**Section 12.3 Written Notice of Termination Required.** Subject to the provisions of Section 12.2(a) hereof, Landlord shall not be deemed to have terminated this Lease and Tenant's right to possession of the leasehold unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease.

**Section 12.4 Remedies Cumulative and No Waiver.** Except as otherwise provided herein with respect to limits on Tenant's rights, options and remedies, all of the respective rights, options and remedies of Landlord and Tenant contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other. Except as otherwise provided herein with respect to limits on Tenant's rights, options and remedies, each of Landlord and Tenant

shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law regardless of whether stated in this Lease. No waiver by either Landlord or Tenant of a breach of any of the terms, covenants or conditions of this Lease by the other shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition therein contained. No waiver of any default of Tenant or Landlord hereunder shall be implied from any omission by Landlord or Tenant to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect such default other than as specified in such waiver. The consent or approval by either party to or of any act by the requesting party requiring the consenting party's consent or approval shall not be deemed to waive or render unnecessary the consenting party's consent to or approval of any subsequent similar acts by the requesting party.

**Section 12.5 Legal Costs.** The defaulting party hereto shall reimburse the non-defaulting party, upon demand, for any costs or expenses incurred by non-defaulting party in connection with any default by the defaulting party under this Lease, regardless of whether suit is commenced or judgment entered. Such costs shall include, without limitation, reasonable legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Further, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys' fees and costs. Such attorneys' fees and costs shall be paid by the losing party in such action.

**Section 12.6 Landlord's Default.** Subject to Landlord's and Tenant's respective rights and obligations under Sections 2.3(b) hereof, if at any time during the Term, Landlord has failed to perform any of its obligations under this Lease, then Tenant shall provide written notice of such default to Landlord. If, within 30 days after Landlord's receipt of Tenant's written notice, Landlord has not cured such default, or has not commenced and continued to diligently pursue the cure thereof if pertaining to a matter that reasonably requires more than 30 days to cure, then Tenant may take such steps to cure such default as may be reasonably required. In the event of an emergency situation, such 30-day notice period shall be reduced to such period as may be reasonable under the circumstances. Landlord shall reimburse Tenant for the costs and expenses of such cure within 30 days after Tenant has provided Landlord with a written statement thereof, together with reasonable supporting documentation. Notwithstanding any provision in this Lease, Tenant shall not have the right to seek termination of this Lease or abatement of Rent (except as otherwise expressly set forth in this Lease) for any Landlord default.

### **Article XIII. Destruction and Restoration**

**Section 13.1 Destruction and Restoration.** Tenant covenants and agrees that in case of damage to or destruction of the Improvements after the Lease Commencement Date, by fire or otherwise (the "**Casualty Damage**"), the insurance proceeds, if any, that, as a result of the Casualty Damage, are payable under any fire or casualty insurance maintained by Tenant pursuant to Section 6.1 hereof shall be payable to the Insurance Trustee (defined in Section 13.2 hereof), and, subject to the terms and conditions of this Section 13.1, Tenant shall commence the prompt and diligent repair and replacement of the Improvements as soon as reasonably is possible so that such Improvements are in substantially the same condition as existed prior to the Casualty Damage as

soon as reasonably possible with such changes or alterations (made in conformity with Article XIX hereof) required by law. Tenant shall forthwith give Landlord written notice of any Casualty Damage upon the occurrence thereof and specify in such notice, in reasonable detail, the extent thereof. Subject to Landlord's and Mortgagee's approval, Tenant shall negotiate the settlement of insurance proceeds with respect to the Casualty Damage. Such restoration, repairs, replacements, rebuilding, changes and alterations, including, without limitation, the cost of temporary repairs for the protection of the Demised Premises pending completion thereof are herein called the "**Restoration**." The Restoration shall be carried on and completed in accordance with Section 13.2 and Article XIX hereof.

**Section 13.2 Application of Insurance Proceeds.** All insurance moneys recovered by Landlord or Tenant and held by Mortgagee (or, if none, another third-party institution reasonably selected by Landlord and Tenant) (the "**Insurance Trustee**") on account of any Casualty Damage, less the reasonable costs, if any, to Tenant or the Insurance Trustee of such recovery, shall be applied to the payment of the costs of the Restoration and shall be paid out from time to time as the Restoration progresses upon the written request of Tenant, accompanied by a certificate of the architect or a qualified professional engineer in charge of the Restoration. Such certificate must state that as of the date of such certificate (a) the sum requested is justly due to the contractors, subcontractors, materialmen, laborers, engineers, architects, or persons, firms or corporations furnishing or supplying work, labor, services or materials for such Restoration, or is justly required to reimburse Tenant for any expenditures made by Tenant in connection with such Restoration, and when added to all sums previously paid out by the Insurance Trustee does not exceed the value of the Restoration performed to the date of such certificate by all of such parties, (b) except for the amount, if any, stated in such certificate to be due for work, labor, services or materials, there is no outstanding indebtedness known to the person signing such certificate, after due inquiry, which is then due for work, labor, services or materials in connection with such Restoration, which, if unpaid, might become the basis of a mechanic's lien or similar lien with respect to the Restoration or a lien upon the Demised Premises, or any portion thereof, (c) the costs, as estimated by the person signing such certificate, of the completion of the Restoration required to be done subsequent to the date of such certificate in order to complete the Restoration do not exceed the sum of the remaining insurance moneys, plus the amount deposited by Tenant, if any, remaining in the hands of the Insurance Trustee after payment of the sum requested in such certificate, and (d) any additional matters required by the Insurance Trustee. Tenant shall furnish the Insurance Trustee at the time of any such payment with evidence reasonably satisfactory to the Insurance Trustee that there are no unpaid past due bills in respect to any work, labor, services or materials performed, furnished or supplied in connection with such Restoration. The Insurance Trustee shall not be required to pay out any insurance moneys where Tenant fails to supply satisfactory evidence of the payment of work, labor, services or materials performed, furnished or supplied, as aforesaid. Upon completion of the Restoration and payment in full thereof by Tenant, the Insurance Trustee shall, within a reasonable period of time thereafter, turn over to Tenant all insurance moneys or other moneys then remaining upon submission of proof reasonably satisfactory to the Insurance Trustee that all costs in connection with the Restoration have been paid in full and the Casualty Damage repaired, restored or rebuilt as nearly as possible to the condition they were in immediately prior to such damage or destruction, or with such changes or alterations as may be made in conformity with Section 13.1 and Article XIX hereof. Notwithstanding anything in Section 13.1 or this Section 13.2 to the contrary, if the insurance proceeds are \$25,000 or less, such insurance proceeds shall be paid directly to Tenant to reimburse it for the cost of the Restoration.

**Section 13.3 Continuance of Tenant's Obligations.** No Casualty Damage shall permit Tenant to terminate this Lease and Tenant waives any rights now or hereafter conferred upon Tenant by present or future law or otherwise to quit or surrender this Lease or the Demised Premises to Landlord in connection with any Casualty Damage. Until any repairs Tenant is obligated to effect under Section 13.1 are completed, Base Rent shall be abated from the date of damage or destruction in the same proportion that the rentable area of the portion of the Building which is unusable by Tenant in the conduct of its operations bears to the total square footage of the Building.

**Section 13.4 Completion of Restoration.** The foregoing provisions of this Article XIII apply only to Casualty Damage occurring after the Lease Commencement Date. Any such Casualty Damage occurring prior to such time shall be restored, repaired, replaced and rebuilt by Landlord. All moneys received by Landlord under its builder's risk insurance coverage shall be applied by Landlord to complete the Restoration of such Casualty Damage.

**Section 13.5 No Adjustment of Rent.** In the event of any Casualty Damage, except to the extent expressly provided in this Lease, the Rent payable hereunder shall not be adjusted or abated.

#### **Article XIV. Condemnation**

**Section 14.1 Total Condemnation.** If the entire or a substantial portion of the Demised Premises are taken as the result of the exercise of the power of eminent domain, or any action in lieu thereof ("**Proceedings**" or "**Taking**"), then (a) this Lease and all right, title and interest of Tenant hereunder shall cease and come to an end on the date of vesting of title pursuant to such Proceedings, and (b) Landlord shall be entitled to and shall receive the total award made or the total proceeds obtained in such Proceedings for taking the Demised Premises, Tenant hereby assigning any interest in such award, damages, consequential damages and compensation to Landlord and Tenant hereby waiving any rights Tenant has now or may have under present or future law to receive any separate award of damages for its interest in the Demised Premises or its interest in this Lease, except as otherwise expressly provided in this Section 14.1. Tenant shall have the right to prove in any Proceedings and to receive a separate award to which Tenant may be entitled by law with respect to movable trade fixtures and equipment and relocation costs.

**Section 14.2 Partial Condemnation.** If any portion of the Demised Premises are taken as the result of the exercise of the power of eminent domain, or any action in lieu thereof, other than a Taking described in Section 14.1 hereof, then (a) this Lease and all right, title and interest of Tenant hereunder shall cease and come to an end on the date of vesting of title pursuant to such Proceedings as to the portion so taken, and (b) Landlord shall be entitled to and shall receive the total award made or the total proceeds obtained in such Proceedings for taking the Demised Premises, Tenant hereby assigning any interest in such award, damages, consequential damages and compensation to Landlord, and Tenant hereby waiving any rights Tenant has now or may have under present or future law to receive any separate award of damages for its interest in the Demised Premises or its interest in this Lease, except as otherwise expressly provided in Section 14.1 hereof with respect to pursuing separate claims as entitled by law.

**Section 14.3 Continuance of Obligations.** In the event of any termination of this Lease, or any part thereof, as a result of any Proceedings, Tenant shall pay to Landlord all Base Rent and all Additional Rent and other charges payable hereunder, apportioned to the date of such termination, with respect to that portion of the Demised Premises so taken in such Proceedings with respect to which this Lease shall have terminated, whether for the entire Lease, or for a portion thereof. No Rent shall be payable with respect to any portion of the Demised Premises condemned, whether the whole or a part, after such termination, whether it be termination of the entire Lease or termination of a portion thereof. To the extent this Lease is not terminated in its entirety, from and after the date of vesting of title in such Proceedings, Tenant shall continue to pay the equitably apportioned amount of Base Rent and Additional Rent and other charges payable hereunder, as provided in this Lease, to be paid by Tenant.

**Section 14.4 Covenant Not to Condemn.** Tenant hereby covenants and agrees that Tenant shall not exercise its power of eminent domain as to all, or any portion of, the Demised Premises.

## **Article XV. Assignment, Subletting and Other Transfers**

**Section 15.1 Restriction on Assignments and Other Transfers.** Tenant shall not assign, mortgage, encumber or pledge this Lease or the Demised Premises without obtaining Landlord's prior written consent in each and every instance which consent, as to a proposed assignment, shall not be unreasonably delayed, conditioned or withheld. No assignment shall relieve Tenant from liability for the obligations of Tenant under this Lease, unless such release is (a) agreed to by Landlord in writing in Landlord's sole discretion, and (b) consented to in writing by Mortgagee. Tenant may sublease all or any portion of the Demised Premises without Landlord's prior consent, provided that (i) no sublease may extend beyond the Term, (ii) Tenant shall have provided Landlord a complete copy of the executed sublease as to such sublessee and any amendments thereto within 10 days of full execution, (iii) such sublessee shall use the Demised Premises only for the Permitted Use, and (d) the sublessee shall, prior to the first day of the sublease and thereafter continuously throughout the term of the sublease, demonstrate that sublessee maintains insurance meeting all of the same requirements imposed on Tenant under this Lease, including, without limitation, maintaining Landlord as an additional insured on the sublessee's liability policy. No subletting shall relieve Tenant from liability for the obligations of Tenant under this Lease, unless such release is (A) agreed to by Landlord in writing in Landlord's sole discretion, and (B) consented to in writing by Mortgagee.

**Section 15.2 Restriction From Further Assignment.** Anything in this Lease to the contrary notwithstanding, and notwithstanding any consent by Landlord to any assignment of this Lease, no assignee may further assign its interest in this Lease without Landlord's consent in each and every instance which consent shall not be unreasonably delayed, conditioned or withheld. In no event shall Tenant be released from any obligations hereunder due to such further assignment.



**Article XVI.**  
**Subordination, Nondisturbance and Attornment**

**Section 16.1 Subordination by Tenant.** This Lease and all rights of Tenant therein, and all interest or estate of Tenant in the Demised Premises shall be subject and subordinate to the lien of any mortgage, deed of trust, security instrument or other document of like nature ("**Mortgage**") which at any time may be placed upon the Demised Premises by Landlord, and to any replacements, renewals, amendments, modifications, extensions or refinancing thereof, and to each and every advance made under any Mortgage. Tenant agrees at any time hereafter, and from time to time on demand of Landlord, to execute and deliver to Landlord and the holder of the Mortgage (the "**Mortgagee**") any subordination agreements or other instruments, releases or other documents which may be reasonably required for the purpose of subjecting and subordinating this Lease to the lien of any Mortgage. Anything in this Section 16.1 to the contrary notwithstanding, so long as no Event of Default has occurred and is continuing, such subordination is conditioned upon, and such subordination agreements or other instruments, releases or documents must explicitly state that Tenant's right to quiet enjoyment under this Lease, and the right of Tenant to continue to occupy the Demised Premises and to conduct its business thereon in accordance with the covenants, conditions, provisions, terms and agreements of this Lease shall not be interfered with, hindered or molested.

**Section 16.2 Attornment.** If any Mortgagee shall succeed to the rights of Landlord under this Lease or to ownership of the Demised Premises, whether through possession or foreclosure or the delivery of a deed to the Demised Premises, then upon the written request of such Mortgagee succeeding to Landlord's rights hereunder, Tenant shall attorn to and recognize such Mortgagee as Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument that such Mortgagee may reasonably request to evidence such attornment. In the event of any other transfer of Landlord's interest hereunder, upon the written request of the transferee and Landlord, Tenant shall attorn to and recognize such transferee as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that such transferee and Landlord may reasonably request to evidence such attornment.

**Article XVII.**  
**Signs**

**Section 17.1 Tenant's Signs.** Tenant may erect signs on the exterior or interior of the Building or on the landscaped area adjacent thereto, including, without limitation, a sign on the exterior of the Building bearing Tenant's or subtenant's names, and a pole or monument sign on the Land, provided, however, that such signs do not violate any applicable federal, state or local statutes, ordinances, codes, rules or regulations. Tenant's erection of any such signs shall be subject to Article XIX hereof.

**Article XVIII.**  
**Purchase Option**

**Section 18.1 Purchase Option.**

(a) Landlord hereby grants to Tenant an option to purchase the Demised Premises in accordance with the terms and provisions of this Section 18.1 (the "**Option to Purchase**").

(b) Commencing on the Lease Commencement Date, Tenant may exercise the Option to Purchase by giving written notice of Tenant's election to purchase the Demised Premises to Landlord (the "**Purchase Notice**").

(c) The purchase price for the Option to Purchase shall be an amount equal to the sum of (the "**Option Purchase Price**"): (i) any prorated Rent not yet due and payable and any other amounts due and payable by Tenant to Landlord under this Lease, (ii) (A) the outstanding principal amount of any debt relating to the Demised Premises or otherwise secured by the Demised Premises together with any accrued interest thereon and any other amounts, fees, penalties, premiums (including, without limitation, the "Make-Whole Amount" as such term is defined in the security documents of Mortgagee) or charges due or required in order to payoff and fully satisfy such debt, or (B) the full and complete assumption, in writing and in accordance with all applicable law, by Tenant of the outstanding principal amount of any debt relating to the Demised Premises or otherwise secured by the Demised Premises on a full recourse basis together with any accrued interest thereon and any other amounts, fees, penalties, premiums (including, without limitation, the "Make-Whole Amount") or charges due or required in order to fully assume such debt and the full and complete release of Landlord and any other parties of any and all obligations or liabilities relating thereto, such assumption to be accompanied by opinions of counsel for the benefit of Mortgagee and such other documents as are reasonably required by Mortgagee to evidence such assumption, (iii) \$485,000, and (iv) all reasonable out of pocket costs and expenses associated therewith or related thereto, including, without limitation, legal fees and any of the foregoing. As Tenant is responsible for any and all costs and expenses associated with the ownership, operation, maintenance and repair of the Demised Premises, there shall be no proration of expenses benefitting Tenant.

(d) Tenant shall perform any due diligence and obtain the consent of any third parties, including, without limitation, any lenders, prior to exercise of the Option to Purchase and upon such exercise Tenant shall be deemed to be satisfied with its investigations and shall have obtained any such consent. The closing shall occur on a date agreed to by Landlord and Tenant that is not later than 30 days after the issuance of the Purchase Notice and in the event of an assumption under Section 18(c)(ii)(B) above, the closing shall occur on a date agreed upon by Landlord, Tenant and the lender of such debt to Landlord that is not later than 30 days after issuance of the Purchase Notice.

(e) At the closing, Landlord shall execute a settlement statement and deliver a limited warranty deed to the Demised Premises, a vendor's affidavit sufficient to allow Tenant to cause Tenant's title insurance company to delete the standard exceptions relating to parties in possession and mechanics' liens as the same relate to Landlord's activities, a non-foreign affidavit, a sales disclosure form and any other documents that are then required by law to be provided by a seller in such instance. At the closing, Tenant shall execute a settlement statement, deliver a sales disclosure form and any other documents that are then required by law to be provided by a purchaser in such instance and shall deliver the Option Purchase Price, by wire transfer to the title company for disbursement to Landlord. Rent shall be prorated to the date of closing, but Rent

shall continue to be payable by Tenant after the exercise of the Option to Purchase through the date of closing. Tenant shall be responsible for all costs of title insurance and other closing costs.

**Section 18.2 Mortgagee's Rights.** Nothing in this Article XVIII shall be deemed to limit or impair any right or remedy available to Mortgagee under any Mortgage. Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the Demised Premises to Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not be subject to any rights of Tenant under this Article XVIII. Tenant shall provide copies of all notices relating to default, casualty and condemnation to Mortgagee at the address provided for notices by such Mortgagee.

## **Article XIX. Changes and Alterations**

**Section 19.1 Tenant's Changes and Alterations.** Tenant shall have the right at any time, and from time to time during the Term, to make such changes and alterations, structural or otherwise, to the Demised Premises as Tenant may deem necessary or desirable in connection with the requirements of its business, which changes and alterations may only be made without Landlord's consent so long as such changes and alterations do not alter any of the structural components of the Building, negatively impact the fair market value of the Demised Premises, materially lower the leasable square footage of the Building, or materially, negatively impact the utility of the Building. Tenant covenants to observe and perform the following with respect to any changes or alterations to the Demised Premises:

(a) Notice. Tenant shall provide Landlord with reasonable prior written notice of any change or alteration to the Demised Premises.

(b) Permits. No change or alteration shall be undertaken until Tenant has procured and paid for, so far as the same is required from time to time, all municipal, state and federal permits and authorizations of the various governmental bodies and departments having jurisdiction thereof. Landlord shall join in the application for such permits or authorizations whenever such action is necessary, all at Tenant's sole cost and expense.

(c) Compliance with Laws. All changes and alterations shall be done promptly and in a good and workmanlike manner and in compliance with all building and zoning laws of the place in which the Demised Premises are situated, all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof, and the orders, rules and regulations of the Board of Fire Underwriters where the Demised Premises are located, or any other body exercising similar functions.

(d) Property of Landlord. All improvements and alterations (other than Tenant's movable trade fixtures and equipment) made or installed by Tenant shall immediately, upon completion or installation thereof, become the property of Landlord without payment therefor by Landlord, and shall be surrendered to Landlord on the expiration of the Term.

(e) Location of Improvements. No change, alteration, restoration or new construction shall be in or connect the Improvements with any property, building or other improvement located outside the boundaries of the Land, nor shall the same obstruct or interfere with any existing easement.

## **Article XX. Miscellaneous Provisions**

**Section 20.1 Entry by Landlord.** Tenant shall permit Landlord and authorized representatives of Landlord to enter upon the Demised Premises at all reasonable times during ordinary business hours, and upon at least 48 hours' prior notice (except in emergencies), for the purpose of inspecting the same and making any necessary repairs to comply with any laws, ordinances, rules, regulations or requirements of any public body, or the Board of Fire Underwriters, or any similar body, provided, however, that Landlord shall use its commercially reasonable efforts to minimize any adverse effect on Tenant's operations at the Demised Premises. Tenant may require that any such entry be accompanied by a representative of Tenant (except in emergencies). If due to an emergency, Landlord and its authorized representatives enter upon the Demised Premises without notice, Landlord shall promptly notify Tenant of such emergency and entry as soon thereafter as is reasonable. Nothing herein contained shall imply any duty upon the part of Landlord to do any such work which, under any provision of this Lease, Tenant may be required to perform, and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same.

**Section 20.2 Indemnification by Tenant.** To the fullest extent allowed by law, except to the extent of the gross negligence or willful misconduct of any Landlord Party, Tenant shall indemnify, defend and hold harmless the Landlord Parties (a) from and against any and all Claims arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the Term, in or about the Demised Premises, and (b) from and against any and all Claims arising during the Term from any condition of the Project Improvements. Tenant's obligations under this Section 20.3 shall be insured by contractual liability endorsement on Tenant's policies of insurance required under the provisions of Section 6.2 hereof.

**Section 20.3 Notices.** All notices, demands and requests shall be in writing, and shall be effectively served by forwarding such notice, demand or request by certified or registered mail, postage prepaid, by commercial overnight courier, or by personal delivery, in each case properly addressed as follows:

If to Landlord:	Holladay Properties Grand Park Sports I LLC 227 South Main Street, Suite 300 South Bend, IN 46601 Attn.: John T. Phair
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with a copy to:	Ice Miller LLP One American Square, Suite 2900 Indianapolis, IN 46282 Attn.: Aaron Dixon
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If to Tenant: City of Westfield, Indiana  
130 Penn Street  
Westfield, IN 46074  
Attn.: Todd Burtron

with a copy to: Krieg DeVault LLP  
One Indiana Square, Suite 2800  
Indianapolis, IN 46204  
Attn.: James T. Crawford Jr.

or at such other place as Landlord or Tenant may from time to time designate by written notice to the other. Notices, demands and requests which shall be served upon Landlord by Tenant, or upon Tenant by Landlord, in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed, actually delivered or deposited with a courier.

**Section 20.4 Quiet Enjoyment.** Landlord covenants and agrees that Tenant shall lawfully and quietly hold, occupy and enjoy the Demised Premises (subject to the provisions of this Lease) during the Term without hindrance or molestation by Landlord or by any person or persons claiming under Landlord.

**Section 20.5 Landlord's Continuing Obligations.** The term "Landlord," as used in this Lease so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the fee of the Demised Premises, and in the event of any transfer or conveyance, the then grantor shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed. The covenants and obligations contained in this Lease on the part of Landlord shall, subject to the aforesaid, be binding on Landlord's successors and assigns, during and in respect of their respective periods of ownership.

**Section 20.6 Estoppel.** Landlord and Tenant shall, each without charge at any time and from time to time, within 10 business days after written request by the other party, certify by written instrument, duly executed, acknowledged and delivered to any mortgagee, assignee of a mortgagee, proposed mortgagee, or to any purchaser or proposed purchaser, or to any other person dealing with Landlord, Tenant or the Demised Premises:

(a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect, as modified, and stating the modifications),

(b) the dates to which the Base Rent or Additional Rent have been paid in advance,

(c) whether or not there are then existing any breaches or defaults by such party or the other party known by such party under any of the covenants, conditions, provisions, terms or agreements of this Lease, and specifying such breach or default, if any, or any setoffs or defenses against the enforcement of any covenant, condition, provision, term or agreement of this Lease

upon the part of Landlord or Tenant, as the case may be, to be performed or complied with (and, if so, specifying the same and the steps being taken to remedy the same), and

(d) such other statements or certificates as either party or any mortgagee may reasonably request.

It is the intention of the parties hereto that any statement delivered pursuant to this Section 20.7 may be relied upon by any of such parties dealing with Landlord, Tenant or the Demised Premises.

**Section 20.7 Memorandum of Lease.** Simultaneously with the execution and delivery of this Lease, Landlord and Tenant shall execute and deliver to each other a Memorandum of Lease, in substantially the form of Exhibit E attached hereto and made a part hereof, and Landlord shall cause such Memorandum of Lease to be placed of record within 10 days of the satisfaction of all conditions precedent to the effect of this Lease. Landlord shall deliver to Tenant a copy of the recorded Memorandum of Lease promptly after recording the same. After the expiration or earlier termination of the Term, Landlord and Tenant shall execute and deliver a release of such Memorandum of Lease in a recordable form reasonably acceptable to the parties.

**Section 20.8 Severability.** If any covenant, condition, provision, term or agreement of this Lease shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law. This Lease shall be construed and be enforceable in accordance with the laws of the State of Indiana.

**Section 20.9 Successors and Assigns.** The covenants and agreements herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant and its permitted successors and assigns.

**Section 20.10 Captions.** The caption of each article of this Lease is for convenience and reference only, and in no way defines, limits or describes the scope or intent of such article or of this Lease.

**Section 20.11 Relationship of Parties.** This Lease does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of landlord and tenant.

**Section 20.12 Entire Agreement.** Except for that certain Reimbursement Agreement, dated August 12, 2014, by and between Landlord (or its affiliate or related party) and Tenant, which shall not be merged into and incorporated in this Lease, all preliminary and contemporaneous negotiations with respect to the subject matter hereof are merged into and incorporated in this Lease. This Lease together with the Exhibits contains the entire agreement between the parties with respect to the subject matter hereof and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

**Section 20.13 No Merger.** There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate or interest in the Demised Premises by reason of the

fact that the same person, firm, corporation or other entity may acquire, hold or own directly or indirectly, (a) this Lease or the leasehold interest created by this Lease or any interest therein, and (b) any such other estate or interest in the Demised Premises, or any portion thereof. No such merger shall occur unless and until all persons, firms, corporations or other entities having an interest (including Mortgagee and, without limitation, any holder of a security interest) in (i) this Lease or the leasehold estate created thereby, and (ii) any such other estate or interest in the Demised Premises, or any portion thereof, shall join in a written instrument expressly effecting such merger and shall duly record the same.

**Section 20.14 No Surrender During Lease Term.** No surrender to Landlord of this Lease or of the Demised Premises prior to the expiration of the Term shall be valid or effective unless agreed to and accepted in writing by Landlord, and no act or omission by Landlord or any representative or agent of Landlord, other than such a written acceptance by Landlord, as aforesaid, shall constitute an acceptance of any such surrender.

**Section 20.15 Surrender of Demised Premises.** At the earlier termination of the Term, Tenant shall surrender the Demised Premises in good order, condition and repair, reasonable wear and tear, condemnation and matters for which Landlord is expressly responsible under this Lease excepted, and shall surrender all keys to the Demised Premises to Landlord at the place then fixed for the payment of Base Rent and shall inform Landlord of all combinations on locks, safes and vaults, if any. Tenant shall at such time remove all of its property therefrom. Tenant shall repair any damage to the Demised Premises caused by such removal. Tenant hereby appoints Landlord its agent to remove all property of Tenant from the Demised Premises upon an early termination of this Lease and to cause its transportation and storage for Tenant's benefit, all at the sole cost and risk of Tenant and Landlord shall not be liable for damage, theft, misappropriation or loss thereof and Landlord shall not be liable in any manner in respect thereto, except for the gross negligence or willful acts of the Landlord Parties. Tenant shall pay all costs and expenses of such removal, transportation and storage. Tenant shall reimburse Landlord upon demand for any expenses incurred by Landlord with respect to removal or storage of abandoned property and with respect to restoring such Demised Premises to good order, condition and repair.

**Section 20.16 Transfer of Demised Premises to Tenant.** In the event the Tenant has not exercised its option to purchase the Demised Premises in accordance with Article XVIII hereof, then, upon expiration of the full stated Term (being the 25 Lease Year period) and upon full performance by Tenant of its obligations under this Lease, the Demised Premises shall become the absolute property of the Tenant, and Landlord and Tenant shall execute proper instruments conveying to Tenant all of Landlord's title thereto.

**Section 20.17 Survival.** All obligations (together with interest or money obligations at the Maximum Rate of Interest) of Tenant accruing prior to expiration or earlier termination of the Term, including, without limitation, Tenant's indemnification obligations, shall survive the expiration or other termination of this Lease.

**Section 20.18 Landlord's Limited Liability.** Tenant agrees to look solely to Landlord's interest in the Demised Premises (including, without limitation, the rents, issues and profits derived directly therefrom) for recovery of any judgment from Landlord, it being agreed that Landlord and its members or managers shall never be personally liable for any personal judgment or deficiency

decree or judgment against it, provided, however, that the foregoing shall not preclude Tenant's rights to seek the equitable remedy of specific performance against Landlord.

**Section 20.19 Broker.** Tenant represents that no broker has negotiated or participated in negotiations of this Lease or is entitled to any commission in connection therewith by or through the actions of Tenant. To the fullest extent allowed by law, Tenant shall indemnify, defend and hold harmless the Landlord Parties from and against any and all Claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the assertion, filing, foreclosure or other legal proceedings with respect to any claim by any person or entity, claiming to have been engaged by Tenant, or by anyone claiming by, through or under Tenant, so as to become entitled to any fee or commission in connection with the transactions contemplated by this Lease. Landlord represents that no broker has negotiated or participated in negotiations of this Lease or is entitled to any commission in connection therewith by or through the actions of Landlord. Landlord shall indemnify, defend and hold harmless Tenant from and against any and all Claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the assertion, filing, foreclosure or other legal proceedings with respect to any claim by any person or entity claiming to have been engaged by Landlord, or by anyone claiming by, through or under Landlord, so as to become entitled to any fee or commission in connection with the transactions contemplated by this Lease.

**Section 20.20 Governing Law and Venue.** This Lease shall be governed by the laws of the State of Indiana, without reference to its choice of law rules. All covenants, conditions and agreements of Tenant arising hereunder shall be performable in the county wherein the Demised Premises are located. Any suit arising from or relating to this Lease shall be brought in Hamilton County, Indiana, and the parties hereto waive the right to be sued elsewhere.

**Section 20.21 Waiver of Jury Trial.** TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

**Section 20.22 Time is of the Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

**Section 20.23 Counterparts.** This Lease may be executed in any number of counterparts, each of which shall constitute an original document.

**Section 20.24 Landlord's Consents, Approvals and Authorizations.** Any Landlord consent, approval or authorization required, permitted and or anticipated by this Lease shall only be effective if made in writing and, unless expressly provided otherwise herein, shall be given, provided or made at Landlord's sole discretion.

**Section 20.25 Tenant Representations and Warranties, Source of Payment and Cooperation.**

(a) Tenant Representations and Warranties. Tenant represents and warrants to Landlord that:



(i) Tenant is a political subdivision, duly organized and existing under Indiana law. Tenant has all requisite power and authority to enter into and deliver this Lease and to comply with and fulfill the terms and conditions of this Lease. The execution and delivery of this Lease by Tenant and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action. This Lease constitutes the legal, valid and binding obligation of Tenant, enforceable in accordance with its terms and conditions.

(ii) The execution and delivery of this Lease and the consummation of the transactions herein contemplated will not conflict with or constitute a breach or default under any bond, debenture, note or any other evidence of indebtedness, loan agreement, lease or other contract to which Tenant is a party or by which it is bound or, to its knowledge, violate any law, regulation or order of the United States of America, or the State of Indiana or any agency or political subdivision thereof or any court order or judgment in any proceeding to which Tenant is or was a party or by which it is bound.

(iii) The undersigned person executing this Lease on behalf of Tenant is a duly appointed representative of Tenant and fully authorized to executed this Lease on behalf of Tenant.

(iv) There is no action, suit, proceeding or investigation, at law or in equity, or by or before any United States court, arbitrator, administrative agency or other federal, state or local governmental authority, pending or, to the actual knowledge of Tenant, threatened against Tenant, wherein an unfavorable decision, ruling or finding would, or could reasonably be expected to, have a material adverse effect on the validity of this Lease.

(b) Source of Payment. Tenant represents and warrants to Landlord that Tenant has irrevocably pledged legally available revenues in order to satisfy its obligations under this Lease.

(c) Cooperation. Tenant shall cooperate with Landlord in connection with the Financing and the construction of the Project Improvements, including, without limitation, providing to Landlord such documents, certificates and opinions of counsel concerning this Lease and related matters as reasonably required by Landlord and/or in connection with the Financing.

[The signature page follows.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Lease to be duly executed as of the day and year first above written.

LANDLORD:

Holladay Properties Grand Park Sports I LLC,  
an Indiana limited liability company

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

TENANT:

City of Westfield, Indiana,  
an Indiana municipal corporation

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

**SCHEDULE 1.3(B)**

**FINANCING**

1.     Loan amount:           \$26,650,000.
2.     Interest rate:         4.15%.
3.     Capitalized interest:   Through March 31, 2016.
4.     Term:                 25 years of debt service payments.

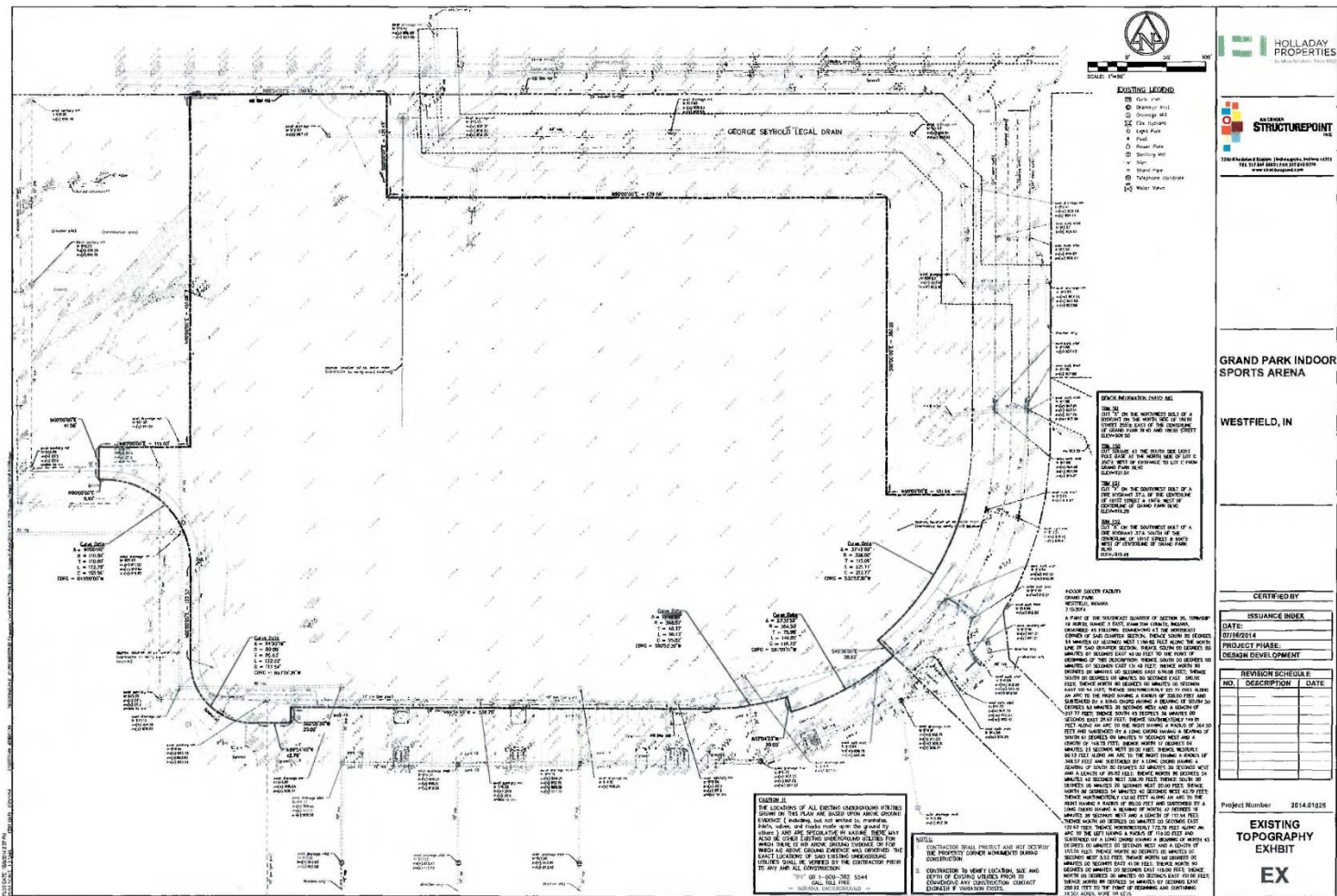
**EXHIBIT A**

**LEGAL DESCRIPTION OF LAND AND**  
**PERMITTED ENCUMBRANCES**

[Attached.]

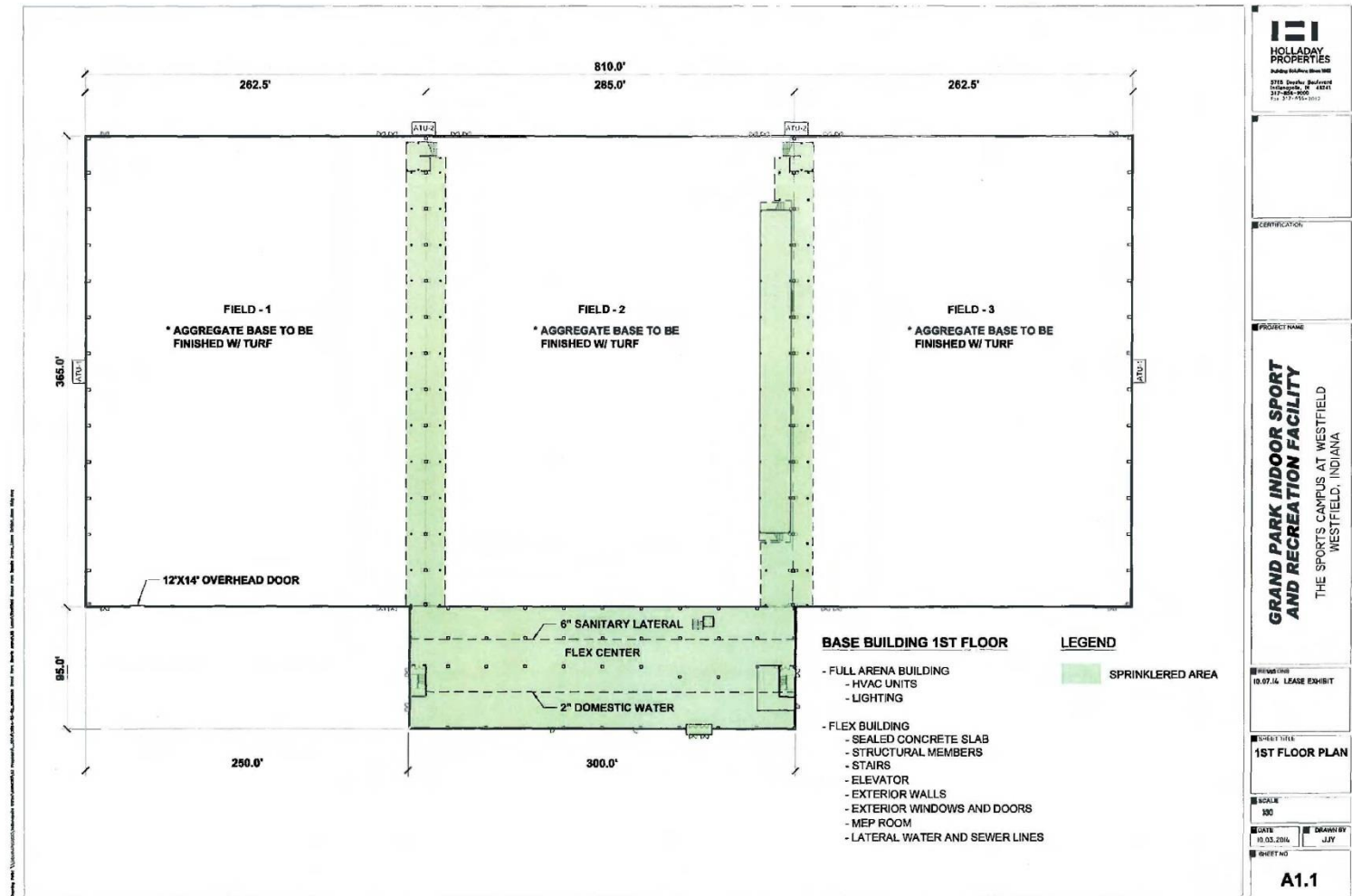
INDOOR SOCCER FACILITY  
GRAND PARK  
WESTFIELD, INDIANA  
7.15.2014

A PART OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 19 NORTH, RANGE 3 EAST, HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 89 DEGREES 54 MINUTES 07 SECONDS WEST 1,196.82 FEET ALONG THE NORTH LINE OF SAID QUARTER SECTION; THENCE SOUTH 00 DEGREES 00 MINUTES 07 SECONDS EAST 40.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 00 DEGREES 00 MINUTES 07 SECONDS EAST 131.49 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 639.08 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 380.00 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 101.94 FEET; THENCE SOUTHWESTERLY 221.77 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 336.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 30 DEGREES 53 MINUTES 39 SECONDS WEST AND A LENGTH OF 217.77 FEET; THENCE SOUTH 45 DEGREES 36 MINUTES 00 SECONDS EAST 28.62 FEET; THENCE SOUTHWESTERLY 149.81 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 364.50 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 61 DEGREES 09 MINUTES 11 SECONDS WEST AND A LENGTH OF 148.75 FEET; THENCE NORTH 17 DEGREES 04 MINUTES 23 SECONDS WEST 20.00 FEET; THENCE WESTERLY 96.13 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 348.57 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 80 DEGREES 52 MINUTES 39 SECONDS WEST AND A LENGTH OF 95.82 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 40 SECONDS WEST 539.70 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 20 SECONDS WEST 20.00 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 40 SECONDS WEST 42.79 FEET; THENCE NORTHWESTERLY 132.02 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 80.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 47 DEGREES 16 MINUTES 39 SECONDS WEST AND A LENGTH OF 117.54 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 122.52 FEET; THENCE NORTHWESTERLY 172.79 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 110.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 45 DEGREES 00 MINUTES 00 SECONDS WEST AND A LENGTH OF 155.56 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 5.92 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 41.56 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 115.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 451.06 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 07 SECONDS EAST 250.92 FEET TO THE POINT OF BEGINNING AND CONTAINING 14.501 ACRES, MORE OR LESS.

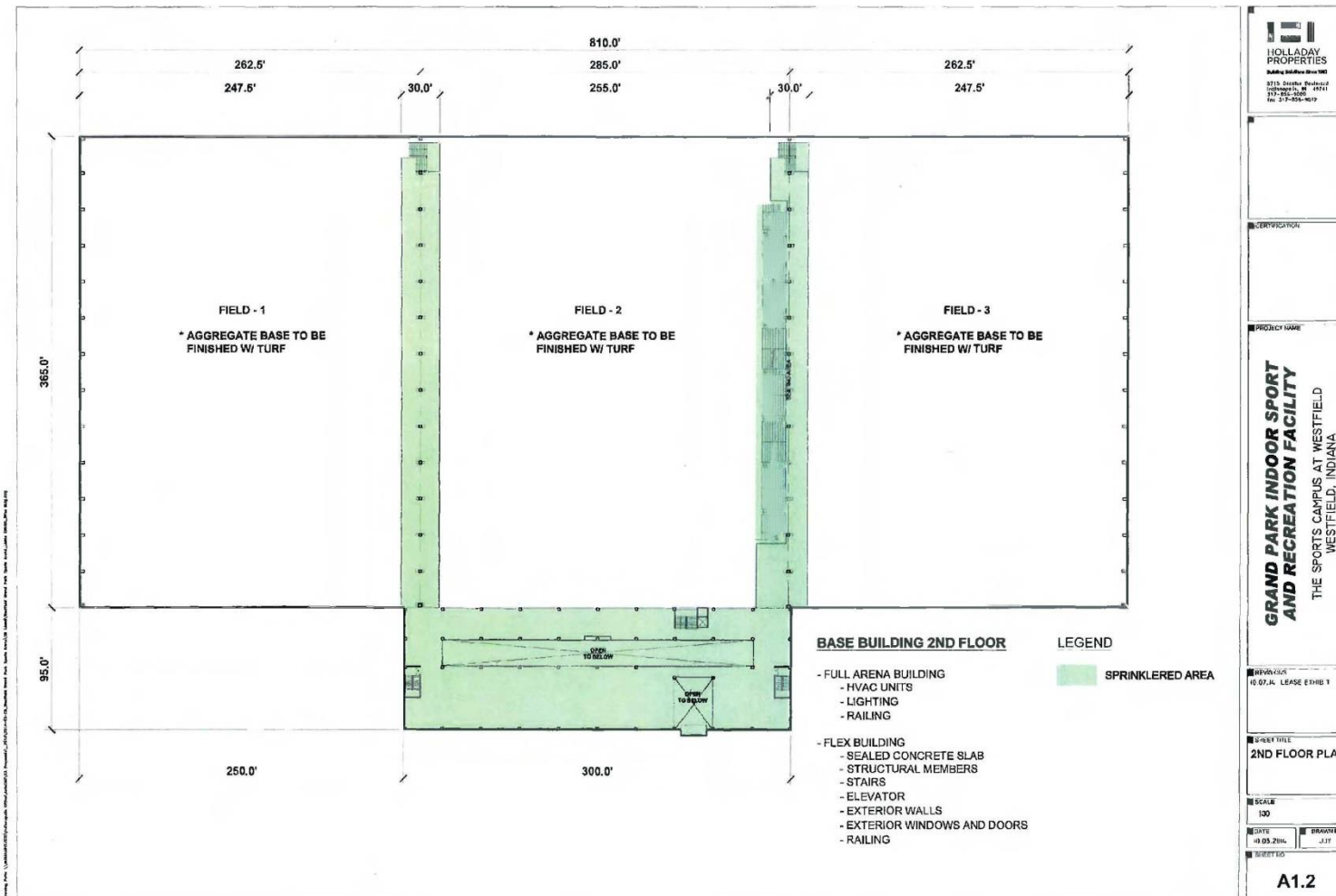


**EXHIBIT B**  
**OUTLINE SPECIFICATIONS**

[Attached.]







## EXHIBIT C

### TENANT ALLOWANCES

Landlord agrees that the projected Project Costs include the allowances set forth immediately below (each such item, an "Allowance") for the purpose of completion of construction of certain aspects of the Project Improvements from a "cold dark shell" and to allow Tenant to designate the fixtures and equipment to be used in furnishing certain aspects of the Project Improvements. The amount of the Allowance is required to be used to pay any and all fees or other costs and expenses incurred in connection therewith and Landlord shall not be separately or additionally responsible for any such costs or expenses. As to each of the Allowances, Landlord and Tenant shall cooperate to complete the construction of such aspects of the Project Improvements from a "cold dark shell" in the manner reasonably designated by Landlord and Tenant shall specify to Landlord the specific fixtures and equipment to be used in furnishing such aspects of the Project Improvements. In the event Tenant does not so cooperate in the completion of construction or Tenant does not specify the fixtures and equipment within the time frames required by Landlord, then Landlord shall have the right to so complete the construction and/or so specify on behalf of Tenant. In the event that the cost to complete the construction and/or the cost of the fixtures and equipment as to a particular Allowance exceed the amount of the Allowance specified below, then Tenant shall pay to Landlord in a lump sum the entire amount of such excess, plus, an aggregate fee of seven and 50/100 percent (7.50%), when required by Landlord and before Landlord orders or otherwise incurs any expense or obligation in connection therewith. In the event Tenant fails to so pay to Landlord in a timely fashion, then Landlord shall have the right to so complete the construction and/or to so specify the fixtures and equipment and to do so in a manner that does not exceed the amount of the Allowance specified below. All of the construction and the fixtures and equipment permitted and designated as to a particular Allowance shall be installed by Landlord as part of the Project Improvements. All of the items acquired and installed using an Allowance shall remain the property of Landlord, but all of which Tenant shall maintain in the same manner as Tenant is obligated to maintain all other elements of the Project Improvements.

1. Flex Space Allowance: \$1,428,700 to be used to improve the approximately 40,820 square foot "flex space" depicted on Exhibit B.
2. Restaurant Space Allowance: \$750,000 to be used to improve the approximately 10,200 square foot restaurant suite depicted on Exhibit B (inclusive of kitchen equipment) and \$393,000 for kitchen equipment to be installed in the restaurant suite.
3. Athletic Field Surfaces Allowance: \$1,293,371 to be used for the surface and applicable padding for three athletic fields.
4. Field Amenities Allowance: \$355,000 to be used for amenities for the fields, such as, but not limited to, scoreboards, public address systems, and signage.

## **EXHIBIT D**

### **FORM OF LEASE COMMENCEMENT DATE MEMORANDUM**

#### **LEASE COMMENCEMENT DATE MEMORANDUM**

This Lease Commencement Date Memorandum (this "**Memorandum**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Holladay Properties Grand Park Sports I LLC, an Indiana limited liability company ("**Landlord**"), and the City of Westfield, Indiana, an Indiana municipal corporation ("**Tenant**").

#### **Recitals**

A. Landlord and Tenant are parties to that certain Lease Agreement, dated as of November 12, 2014 (the "**Lease**"), relating to certain premises (the "**Demised Premises**") located in Westfield, Hamilton County, Indiana.

B. Landlord and Tenant desire to confirm the Lease Commencement Date (as defined in the Lease) and the expiration date of the Term (as defined in the Lease).

#### **Acknowledgements**

In consideration of the facts set forth in the Recitals, Landlord and Tenant hereby acknowledge and agree as follows:

1. All capitalized terms not otherwise defined in this Memorandum shall have the respective meanings given them in the Lease.
2. The Lease Commencement Date under the Lease is \_\_\_\_\_, 20\_\_.
3. The Term of the Lease expires on \_\_\_\_\_, 20\_\_, unless the Lease is sooner terminated in accordance with the terms and conditions of the Lease.
4. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original document.

[The signature page follows.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Memorandum to be duly executed as of the day and year first above written.

LANDLORD:

Holladay Properties Grand Park Sports I LLC,  
an Indiana limited liability company

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

TENANT:

City of Westfield, Indiana,  
an Indiana municipal corporation

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT E

### MEMORANDUM OF LEASE

This Memorandum of Lease (this "Memorandum") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Holladay Properties Grand Park Sports I LLC, an Indiana limited liability company ("Landlord"), and the City of Westfield, Indiana, an Indiana municipal corporation ("Tenant").

#### Recitals

C. Landlord is the fee owner of that certain parcel of land situated in the City of Westfield, in Hamilton County, State of Indiana, legally described on Exhibit A attached hereto and made a part hereof (the "Land").

D. Landlord and Tenant have previously entered into that certain Lease Agreement dated as of November 12, 2014 (the "Lease"). Pursuant to the Lease, Landlord has demised and leased to Tenant, and Tenant has leased from Landlord, certain premises (the "Demised Premises"), upon the terms, provisions and conditions set forth in the Lease.

E. Landlord and Tenant desire to set forth certain terms, provisions and conditions contained in the Lease in this Memorandum for recording purposes.

#### Agreements

Now, therefore, for and in consideration of the foregoing Recitals, the covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Incorporation of Recitals, Definitions. The foregoing recitals are hereby incorporated into and made a part of this Memorandum, as if fully set forth herein. Capitalized terms used in this Memorandum and not otherwise defined herein shall have the respective meanings given them in the Lease.

2. Term. The term of the Lease shall be for 25 Lease Years, scheduled to commence on \_\_\_\_\_, 20\_\_\_\_, and to end on \_\_\_\_\_, 20\_\_\_\_ (the "Initial Term").

3. Purpose of Memorandum. This Memorandum is being executed and recorded in order to give notice of the existence of the Lease and the rights and options set forth therein. This Memorandum is not a restatement of the Lease, or any portion thereof, and shall not alter, modify, vary or amend any of the terms, provisions or conditions of the Lease. In the event of any conflict or inconsistency between the terms, provisions and conditions of this Memorandum and the terms, provisions and conditions of the Lease, the terms, provisions and conditions of the Lease shall in all respects govern and control.

IN WITNESS WHEREOF, each of the parties hereto has caused this Memorandum to be duly executed as of the day and year first above written.

LANDLORD:

Holladay Properties Grand Park Sports I LLC,  
an Indiana limited liability company

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

Acknowledgment

STATE OF \_\_\_\_\_  
SS.

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ personally known to me to be the \_\_\_\_\_ of Holladay Properties Grand Park Sports I LLC, an Indiana limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such \_\_\_\_\_, he signed and delivered the said instrument on behalf of such entity.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

Resident of: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

TENANT:

City of Westfield, Indiana,  
an Indiana municipal corporation

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

Acknowledgment

STATE OF \_\_\_\_\_  
SS.

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid,  
DO HEREBY CERTIFY that \_\_\_\_\_ personally known to me to be the  
\_\_\_\_\_ of City of Westfield, Indiana, an Indiana municipal corporation, and  
personally known to me to be the same person whose name is subscribed to the foregoing  
instrument, appeared before me this day in person and acknowledged that as such  
\_\_\_\_\_, he signed and delivered the said instrument on behalf of such entity.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

Resident of: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

This instrument was prepared by \_\_\_\_\_

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. \_\_\_\_\_

And When Recorded Return To:

[ • ]

[ • ]

[ • ]

[ • ]

Attn.:



**EXHIBIT F**  
**PROJECT COSTS**

[Attached.]

EXHIBIT F

**Grand Park Indoor Athletic Facility Projected Construction Budget  
November 2014**

Budget	Qty.	Value/Unit	Sub-Total Value	Total Value	Total Cost
Land	14.51	\$	41,351		\$ 600,000
Building Envelope & Mechanics					
Athletic Facility	295,650 sf	\$41 psf	12,253,067		
Flex Center - 1st Floor	28,580 sf	\$80 psf	2,286,400		
Flex Center - 2nd Floor	28,580 sf	\$80 psf	2,286,400		
Mezzanine	24,975 sf	\$42 psf	1,041,158		
Sub-Total				\$ 17,867,025	
Flex Center Interior Finish Allowance - First Floor					
Restaurant	10,200 sf	\$74 psf	750,000		
Restaurant Restroom	663 sf	\$35 psf	23,205		
Office	1,920 sf	\$35 psf	67,200		
Storage / Staging	1,325 sf	\$35 psf	46,375		
Referee Room	375 sf	\$35 psf	13,125		
Fields Restrooms/Shower	2,836 sf	\$35 psf	99,260		
Common Area	11,261 sf	\$35 psf	394,135		
Sub-Total	28,580 sf			1,393,300	
Flex Center Interior Finish Allowance - Second Floor					
Seating & Bar	4,500 sf	\$35 psf	157,500		
Seating & Bar Restroom	660 sf	\$35 psf	23,100		
Office	4,556 sf	\$35 psf	159,460		
Multi-purpose- A	3,576 sf	\$35 psf	125,160		
Multi-purpose- B	2,316 sf	\$35 psf	81,060		
Office Restroom	484 sf	\$35 psf	16,940		
Mezzanine Viewing Area	536 sf	\$35 psf	18,760		
Mezzanine Restroom	660 sf	\$35 psf	23,100		
Common Area	5,152 sf	\$35 psf	180,320		
Atrium (Common Area)	6,140 sf	\$0 psf	-		
Sub-Total	28,580 sf			785,400	
Field Allowance	3	431,124		1,293,371	
Field Amenity Allowance					
Doors / Overhead			20,000		
Flags / Poles			25,000		
Scoreboards			30,000		
Signs Exterior			30,000		
Golf Cart			10,000		
Seating / Case			50,000		
Tables / Office			40,000		
Misc. & Cleanup			150,000		
Sub-Total				355,000	
Sub-Total					21,694,096
Architect / Engineering				250,000	
Lime Stabilization Allowance				250,000	
Architectural Panels Allowance				250,000	
Development Fee				750,000	
Capitalized Interest				1,465,417	
Finance Issuance Cost				990,487	
Legal				100,000	
Contingency				300,000	
Sub-Total				4,355,904	
<b>Total Project Cost</b>				<b>\$ 26,650,000</b>	
<b>Total SF</b>					<b>377,785 sf</b>
<b>Total PSF</b>				<b>\$</b>	<b>70.54</b>